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Users' Guide

Interpretation and Enforcement and Penalties By-Laws

- Use of an interpretation By-Law is recommended to avoid having to use repetitively cumbersome wording, and to avoid having to define, within each By-Law or Policy document, terms that are commonly used in many of the municipal unit's By-Laws and Policies. This can enhance the simplicity and understandability of these documents.

- When including a defined term in the interpretation By-Law care must be taken to ensure that the defined term is not used in a different sense in any existing By-Laws or Policies, and that any conflicts with the definitions in enabling legislation are sorted out without amibiguity. After adopting an interpretation By-Law, care will also be required to ensure that defined terms in subsequently drafted By-Laws or Policies are used in a compatible sense.

- In the model by-laws, when the term **[municipality]** or **[municipal]** is found, it is suggested that a municipal unit substitute an appropriate short-form, such as "Region" or "Regional" for a Regional Municipality, and have that term defined in the Interpretation By-Law.

- Use of an Enforcement and Penalties By-Law is also recommended to fill gaps in enforcement, remedies and penalty sections of specific by-laws, and to avoid undue repetition of provisions that are common to many by-laws.

- Interpretation and Enforcement and Penalties By-Laws are unique in that they have an important impact on a wide variety of by-laws. **It is important to be mindful of these by-laws both at the time of drafting and enacting new by-laws and at the time of enforcing them.** Members of the public requesting a by-law should be advised of the existence of these by-laws, and provided a copy if they are needed to reasonably understand and apply a particular by-law to their circumstances.

Making Changes to the Model By-Laws

- Bolded items in square brackets in the model By-Law documents indicate places in which the individual municipality must insert an appropriate choice. References in the model documents to section numbers within the same document have been bolded to remind the user to change the section numbers when additions or deletions to the model document have been made by the user, possibly affecting the section numbering.

- The model By-Law documents are only models. Each municipal unit should change the model documents to suit the policy choices of Council and the circumstances applicable to the individual municipal unit. In making changes, it is suggested that care should be taken to:

- review the Editor's Annotations for any suggestions that may be available;
- review the enabling legislation to ensure the change appears to be authorized by statute;
- examine the model document to ensure that the remaining text is modified in all applicable places for consistency, and to ensure the change does not create inappropriate gaps in coverage of the By-Law or undue ambiguity in its interpretation;
- consider whether the change will impact on other By-Laws or Policies, including an Interpretation By-Law; and
- review the draft with the unit's solicitor prior to submission to Council.

Repeal of Old By-Laws

For By-Laws which are being substituted for an existing by-law, the existing by-law should be repealed. Sample wording is included at the conclusion of several of the model by-laws, including Chapter 2, Enforcement and Penalties By-Law.

Electronic Version of the Model By-Laws

Municipal units may obtain electronic versions of the model By-Laws and the associated Editor's Annotations in Microsoft Word format from the Association of Municipal Administrators. The documents will be provided on CD or disk for a modest charge. Contact:

Association of Municipal Administrators
Suite 1106, 1809 Barrington St
Halifax, N.S.
B3J 3K8
Tel (902) 423-2215
Fax (902) 425-5592
e-mail: amans@ns.sympatico.ca

Solicitor's Advice

The legal effect of the model by-law documents may be affected by legal developments since the time of drafting. Additionally, the documents may be subject to particular legal issues affecting your municipality. Other errors or omissions may have found their way into the documents. **The model by-laws should not be enacted without prior review**

with your Municipal solicitor. The publishers, editors, and authors of this manual accept no liability for any claims arising from the use of this Manual.

Chapter [1]
Interpretation By-Law

1. This By-Law is entitled the "Interpretation By-Law".

2. In this By-Law:

   (1) "existing or future by-law, policy, recorded resolution or resolution" means a by-law, policy, recorded resolution or resolution of the **[Municipality]** in force immediately before the coming into force of this By-Law, or a by-law, by-law amendment, policy, policy amendment or resolution of the **[Municipality]** which comes into force after the coming into force of this By-Law.

3. In this By-Law and in any existing or future by-law, policy, recorded resolution or resolution, unless the context otherwise requires:

   (1) words importing the singular number only include the plural number and vice versa;

   (2) words importing only one gender include the masculine, feminine and neutral genders;

   (3) all references to officers or employees of the **[Municipality]** include a person authorized or appointed in an interim or "acting" capacity;

   (4) all references to an employee of the **[Municipality]** include references to subordinate employees authorized to act in place of or on behalf of the employee;

   (5) all references to committees are references to committees of the **[Municipality]**;

(6) all references to the time of day shall be to that system of time in use in the **[Municipality]** at the relevant time whether it be "Atlantic Standard Time: or "Atlantic Daylight Time";

(7) words in any by-law, policy, recorded resolution or resolution have the meaning ascribed to them in definitions in that by-law, policy, recorded resolution or resolution, and, if no definition is contained therein or if the context indicates otherwise,

(a) they have the meaning ascribed to them in section **[4]** of this By-Law, and, if no definition is contained herein or if the context indicates otherwise;

(b) they have the meaning ascribed to them in definitions in the legislation enabling that by-law, policy, recorded resolution or resolution, and, if no definition is contained therein or if the context indicates otherwise;

(c) they have the meaning ascribed to them in definitions in the *Interpretation Act*;

4. For purposes of section **[3(7)(a)]** of this By-Law, the following definitions apply unless the context otherwise requires:

(1) "**[e.g. Municipality OR Region OR County OR Town]**" means **[insert full legal name of the municipal unit]** and "**[Municipal OR Regional]**" has a corresponding meaning;

(2) "Building Inspector" means the Building Inspector of the **[Municipality]**;

(3) "by-law" means by-law of the **[Municipality]**;

(4) "By-Law Enforcement Officer" means the employee(s) of the **[Municipality]** appointed to enforce some or all by-laws of the **[Municipality]**;

(5) "Chief Administrative Officer" or "CAO" means the Chief Administrative Officer of the **[Municipality]**;

(6) "Clerk" means the Clerk of the **[Municipality]**;

(7) "Council" means the Council of the **[Municipality]**;

(8) "Councillor" means a member of Council;

(9) "Development Officer" means the Development Officer of the **[Municipality]**;

(10) "district" means a polling district of the **[Municipality]** approved by the Utility and Review Board and, when followed by a number, indicates a particular district as identified in materials submitted to and approved by the Utility and Review Board when defining the **[Municipality's]** polling districts;

(11) "Engineer" means the **[[municipal] Engineer OR the Director of Public Works of the [Municipality]]**;

(12) "Mayor" means the Mayor of the **[Municipality]** and Deputy-Mayor has a corresponding meaning;

(13) "**[Municipal]** Staff" means an employee of the **[Municipality]** authorized by or through the **[CAO OR Council]** to undertake an activity

(14) "person" means any person, male or female, and any body corporate, and includes a partnership except when modified by the word "human" or "natural";

(15) "Province" means the Province of Nova Scotia and "provincial" has a corresponding meaning;

(16) "Solid Waste Manager" means the **[Municipality's]** Solid Waste Manager;

(17) "Treasurer" means the Treasurer of the **[Municipality]**;

(18) "ward" means a polling district of the **[Municipality]** approved by the Utility and Review Board and, when followed by a number, indicates a particular ward as identified in materials submitted to and approved by the Utility and Review Board when defining the **[Municipality's]** polling districts;

(19) "Warden" means the Warden of the **[Municipality]** and Deputy-Warden has a corresponding meaning.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading_____
•Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this INTERPRETATION BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

• Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Interpretation By-Law
Editor's Annotations

Enabling Legislation

No specific authority, beyond the authority to pass the substantive by-laws.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- Please note the comments in the User's Guide under the heading "Interpretation and Enforcement and Penalties By-Law".
- The legislative authority for an Interpretation By-Law stems from the substantive by-law, policy and resolution-making authority over the subjects set out in the legislation. By using an Interpretation By-Law, a **[Municipality]** is in effect splitting into two by-laws matters which could be contained exclusively within the by-law dealing with the specific substantive subject matter.
- In the absence of an Interpretation By-Law, the *Interpretation Act* will likely apply to municipal by-laws (because the Act applies to "regulations" which include "by-laws".
- The model By-Law has been drafted to assist in the interpretation of existing by-laws and future by-laws as well as policies, recorded resolutions and ordinary resolutions of Council. The rules of interpretation and definitions contained within the by-law are not absolute and specifically are subject to:
    - context requiring another interpretation; and

- the specific definitions contained within the by-law, policy or resolution which is being interpreted.

Section 3 contains some general rules of interpretation, including conventional rules about singular/plural numbers and masculine/feminine/neutral genders and references to time.

- Subsection (7) of section 3 contains an interpretive hierarchy for definitions found in by-laws, enabling legislation and the Provincial *Interpretation Act* (which Act serves the same purpose for statutes that an Interpretation By-Law serves for by-laws).

- Amongst other general rules of interpretation, section 3 contains rules allowing employees in an "acting" position or subordinate employees to act on behalf of their principals. Legal advice should be obtained regarding whether this is consistent with the statutory authority in any particular instance.

- Section 4 contains a number of definitions principally designed to avoid the necessity of making reference in by-law provisions to the full legal name of the municipal unit when referring to that municipal unit or to one of its employees or officers. These should be tailored to suit each municipal unit's circumstances.

Chapter [2]
Enforcement and Penalties By-Law

Title

1. This By-Law is entitled the "Enforcement and Penalties By-Law".

Interpretation

2. In this By-Law:

   (1) "existing by-law" means a by-law of the **[Municipality]** in force immediately before the coming into force of this By-Law;

   (2) "purposes of inspection, maintenance and enforcement" includes attempting to determine whether a by-law is being or has been contravened, gathering evidence of a possible contravention, or attempting to prevent a contravention or the continuation of a contravention of a by-law; and

   (3) "future by-law" means a by-law or by-law amendment of the **[Municipality]** which comes into force after the coming into force of this By-Law.

3. This By-Law applies in respect of all other by-laws of the **[Municipality]** which may be in force from time to time, including existing by-laws and future by-laws.

4. An otherwise valid and applicable provision in this By-Law:

   (1) shall supercede and repeal, but only to the extent of the inconsistency, any inconsistent provision in an existing by-law;

(2) shall be superceded and repealed, but only to the extent of the inconsistency, by a directly conflicting provision in a future by-law or by a provision expressly repealing this By-Law;

(3) shall not be repealed by a future by-law in the absence of a directly conflicting provision or a provision expressly repealing this By-Law in such future by-law; and

(4) for greater certainty, a provision in a future by-law shall not be deemed to directly conflict with a provision in this By-Law solely because such future by-law contains some municipal enforcement provisions, remedies or penalties but makes no reference to additional municipal enforcement provisions, remedies or penalties available pursuant to this By-Law.

Inspection, Maintenance and Enforcement Powers

5. Subject to any restrictions or limitations contained in valid and applicable constitutional, federal or provincial legislation or in any future by-law, future Council policy or future Council resolution, **[insert name of municipal police force]** and those **[Municipal]** employees authorized by **[the Chief Administrative Officer OR the Council]** to enforce a by-law may, for purposes of inspection, maintenance and enforcement of such by-law, with a warrant or other legal process where required by law,

(1) enter upon or into private property, including residential dwellings; and

(2) take photographs, videotape, measurements or otherwise record or preserve evidence; and

(3) may disturb or interfere with real property to the extent reasonably necessary therefore.

Remediation

6. Subject to any restrictions or limitations contained in valid and applicable constitutional, federal or provincial legislation or in any future by-law, future Council policy or future Council resolution, in the event of a contravention of a by-law and irrespective of whether a prosecution has occurred or will occur, **[insert name of municipal police force]** and those **[Municipal]** employees, contractors, or agents authorized by **[the Chief Administrative Officer OR the Council]** to remediate a by-law contravention may remedy the contravention of a by-law, including apprehending, removing, impounding or disposing, including the sale or destruction, of plants, animals, vehicles, improvements or other things, provided however that where it is apparent that the actual cash value of disturbance, damage or loss from the remediation together with the cost of the remediation itself is likely to exceed **[insert amount]**

   (1) the person in contravention of the by-law shall first be given a reasonable period of time to remediate the contravention, if the remediation work required is to that person's property ; and

   (2) the approval in advance of **[the CAO OR Clerk]** shall be obtained

   except in the event of actual or apparent imminent harm to a human person or animal, or in the event of actual or apparent imminent damage to property of other parties in excess of **[insert amount]**.

7. The costs of remediation pursuant to **[section 6]** of this By-Law shall be calculated, charged and collected, along with interest **[at the rate of [insert percentage rate] OR at such rate as may be set by Council Policy from time to time]**, calculated from the date of the completion of the remediation until the date of payment, as a first lien on the property upon which, or for the benefit of which, the work was done.

Penalties

8. Subject to sections **[9 and 10]**, any person who contravenes any provision of any by-law of the **[Municipality]**, including an existing or future by-law, commits an offence punishable on summary conviction

   (1) by a fine or imprisonment or both as specified in that by-law; or

   (2) where the offence is one validly governed by and prosecuted pursuant to the summary ticket offence provisions under the *Summary Proceedings Act* and *Summary Offence Ticket Regulations*, by such penalty as may be stipulated for that offence in those *Regulations*;

   (3) where the applicable by-law, does not stipulate the amount of a fine or imprisonment for an offence, by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

9. **[When a by-law, including an existing or future by-law stipulates that a person committing an offence may avoid prosecution for the offence by paying to the [Municipality] a particular sum within a specified period of time in accordance with the [Municipality's] [Payment in Lieu of Prosecution Policy] and when a person committing an offence in fact receives a [Notice of By-Law Violation] pursuant to that Policy, and when that person complies with the terms of payment on such [Notice], that person shall thereby avoid prosecution for that offence.]**

10. Notwithstanding the fine and imprisonment set out for an offence in this By-Law or in any other existing or future by-law, any person who

(1) is convicted of contravening any provision in a by-law except a conviction pursuant to the summary ticket offence provisions under the *Summary Proceedings Act* and *Summary Offence Ticket Regulations*; and

(2) who has been convicted in respect of the same provision of the same by-law within the previous six (6) months

shall be punishable on summary conviction to a fine and imprisonment, the minimum and maximum amounts of which shall be double those otherwise applicable for the offence, except that the maximum amount of the fine or imprisonment shall be the maximum permitted by law in the event that doubling the maximum would exceed the maximum permitted by law.

11. In addition to any fines payable upon conviction for an offence, when any person has been convicted of failing to pay a fee, cost, rate, toll or charge, the Court may impose a further penalty in the amount of such unpaid fee, cost, rate, toll or charge.

12. The payment of any amount **[pursuant to the Payment in Lieu of Prosecution Policy or]** pursuant to any conviction for an offence shall not relieve the person making the payment of any civil liability for damages or costs, including, but not restricted to, liability for the costs of remediation pursuant to s. **[6]** or pursuant to any other remediation remedy contemplated by law.

Repeal

13. **[Chapter [___] of the By-Laws OR By-Law Number [___]] of the [Municipality] entitled [insert name of repealed Penalties By-Law] is hereby repealed and replaced by this By-Law.]**

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading_____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this ENFORCEMENT AND PENALTIES BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Enforcement and Penalties By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

172 (1) A council may make by-laws, for municipal purposes, respecting

...

(l) the enforcement of by-laws made under the authority of a statute, including

(i) procedures to determine if by-laws are being complied with, including entering upon or into private property for the purposes of inspection, maintenance and enforcement,

(ii) remedies for the contravention of by-laws, including undertaking or directing the remedying of a contravention, apprehending, removing, impounding or disposing, including the sale or destruction, of plants, animals, vehicles, improvements or other things and charging and collecting the costs thereof as a first lien on the property affected,

(iii) the creation of offences,

(iv) for each offence, imposing a fine not exceeding ten thousand dollars or imprisonment for not more than one year or both, including the imposition of a minimum fine,

(v) providing for the imposition of a penalty for an offence that is in addition to a fine or imprisonment if the penalty relates to a fee, cost, rate, toll or charge that is associated with the conduct that gives rise to the offence,

(vi) providing for imprisonment, for not more than one year, for non-payment of a fine or penalty,

(vii) providing that a person who contravenes a by-law may pay an amount established by by-law and if the amount is paid the person will not be prosecuted for the contravention,

(viii) providing, with respect to a by-law, that in a prosecution for violation of the by-law, evidence that one person is disturbed or offended is *prima facie* evidence that the public, or the neighbourhood, is disturbed or offended.

505 (1) A person who

(a) violates a provision of this Act or of an order, regulation or by-law in force in accordance with this Act;

(b) fails to do anything required by an order, regulation or by-law in force in accordance with this Act;

(c) permits anything to be done in violation of this Act or of an order, regulation or by-law in force in accordance with this Act; or

(d) obstructs or hinders any person in the performance of their duties under this Act or under any order, regulation or by-law in force in accordance with this Act,

is guilty of an offence.

(2) Unless otherwise provided in a by-law, a person who commits an offence is liable, upon summary conviction, to a penalty of not less than one hundred dollars and not more than ten thousand dollars and in default of payment, to imprisonment for a term of not more than two months.

(3) Every day during which an offence pursuant to subsection (1) continues is a separate offence.

507 Where a council, village commission, committee or community council or the engineer, the administrator or another employee of a municipality lawfully causes work to be done pursuant to this Act, the cost of the work, with interest at the rate determined by the council, by policy, from the date of the completion of the work until the date of payment, is a first lien on the property upon which, or for the benefit of which, the work was done.

See also sections 503, 506 and 508.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

It is particularly important that legal counsel be consulted regarding the model Enforcement and Penalties By-Law. The interaction between the Penalties By-Law and existing and future By-Laws and statutory and constitutional limitations upon municipal enforcement and remedial powers involve complex legal issues.

Comment

- This By-Law can be used to set minimum and maximum fines and the period of imprisonment in default of payment for offences against municipal by-laws which do not expressly stipulate or identify a penalty (section 8(2)). In determining the amount to be set as a fine and the amount of imprisonment to set, it should be noted that the maximum fine for a by-law offence is $10,000 and the maximum period of imprisonment is 1 year. Imprisonment of up to a year is available as a primary penalty (along with the fine) and not just as a period of imprisonment for non-payment.

- The wording of the model By-Law has been developed to preserve any penalties which are stipulated in individual by-laws. If Council wishes to use the passage of this By-Law as an opportunity to increase the penalties that are set out in existing by-laws, it is recommended that those existing by-laws be amended directly in order to avoid the confusion of the public that might result from publishing penalties in individual by-laws which have been superceded by a general by-law found elsewhere.

- Section 5 of the model By-Law exercises the enabling authority in section 172(1)(l)(i) of the *MGA* for by-law enforcement employees to enter private property for purposes of inspection, maintenance and enforcement. Those purposes are defined in section 2(2) of the By-Law. It should be noted that section 503(3) of the *MGA* contains similar powers in respect of inspection but places special limits upon entry into a dwelling house. These statutory limitations, and constitutional limitations on search and seizure powers arising out of the

Canadian Charter of Rights and Freedoms, cannot be displaced by the By-Law, and the By-Law powers are expressly made "subject to" any limitations of that kind. Entry onto private property which is carried out solely for purposes of investigating an alleged breach of a by-law with a view to laying charges, likely requires prior judicial approval (i.e. a search warrant), whereas inspections to determine compliance, or to ground the issuance of a permit, likely do not require a warrant.

- Section 6 of the model By-Law allows the municipal unit to remedy by-law contraventions itself. There is specific authority for this remedial provision in section 172(1)(l)(ii) along with a somewhat more limited authority in section 503(1) of the *MGA*. The model By-Law wording seeks to avoid arbitrary use by requiring Council or CAO approval and that the person in contravention be given a reasonable period of time to take their own remedial action before the municipal unit remediates the violation itself, except when the value of the remediation and associated property damage is minor in nature and except when there is a threat of imminent harm from not taking immediate action. Municipal units adopting these limitations will have to be careful to comply with them in each instance.

- Pursuant to section 7 of the model By-Law, costs of remediation undertaken by the municipal unit are charged back to the taxpayer as a lien against the property. This By-Law allows for stipulation of an interest rate payable by a late or defaulting owner. This can be used in place of the policy regarding interest required by section 507 of the *MGA*. It is suggested that a reasonable rate may be the same rate payable on overdue taxes.

- Section 9 should only be used in connection with a Payment in Lieu of Prosecution Policy (see Chapter 9 of the Model Policies Manual). Likewise, the wording shown in bold face in square brackets in section 12 should be omitted if Council is not putting into effect a Payment in Lieu of Prosecution Policy.

- Section 10 doubles the minimum and maximum fine or imprisonment amounts in cases where the offender has been convicted within the previous 6 months of violating the same by-law.

- The interaction between the Penalties By-Law and existing and future by-laws is spelled out in sections 2-4. The text is intended to avoid the necessity of repeating the enforcement and remediation powers and the provision for doubling the penalty for a second offence in regards future by-laws which may be enacted unless those by-laws expressly supercede the Enforcement and Penalties By-Law.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [3]
Solid Waste By-Law

5. This By-Law is entitled the "Solid Waste By-Law".

Definitions

6. In this By-Law:

(1) "backyard composting" means composting at a residential dwelling unit of organic solid waste comprised of yard waste and food scraps and spoiled or waste food or foodstuff excluding meat, fish, eggs or dairy products where:

(a) the waste is generated by the residents of the dwelling unit or neighbouring dwelling units or both;

(b) the annual production of compost on any property lot does not exceed 60 cubic metres;

(c) the composter or compost pile is not located within 10 metres of any window or door of a structure on an adjacent property.

(2) "compostables" means:

(a) for persons serviced by the municipal collection of compostables or for persons who do not deposit or arrange for the deposit of their compostables at a municipal solid waste facility for compostables: food scraps and spoiled or waste food or foodstuff including vegetable peelings, meat, fish, eggs, bones, waste food products, pet

litter, soiled and wet paper and soiled paper products such as table napkins, paper towels, pizza boxes, leaves and grass clippings, together with such other organic materials as may, from time to time, be identified in public education documents distributed by the **[Municipality]** as suitable for municipal collection in compostainers; and

(b) for persons not serviced by municipal collection of compostables and for persons who do not deposit or arrange for the deposit of their compostables at a municipal solid waste facility for compostables: food scraps and spoiled or waste food or foodstuff, excluding meat, fish, eggs or dairy products.

(3) "compostainer" means a wheeled aerated cart designed to be emptied by hydraulic lifting devices and approved by the **[Municipality]** for the storage and municipal collection of compostables including **[e.g. 240 litre or 120 litre]** capacity carts manufactured by **[insert manufacturer's name such as SSI Schaefer]** and distributed, sold or otherwise made available by or through the **[Municipality]** for that purpose and their replacements or successors from time to time, or other containers approved by the **[Municipality's Solid Waste Manager]**;

(4) "composting" means the nuisance-free biological decomposition of organic materials, substances or objects under controlled circumstances to a condition sufficiently stable for nuisance-free and safe storage and use in land applications;

(5) "contaminated soil" means soil which

(a) has been contaminated with and contains in excess of 2,000 parts per million of total petroleum hydrocarbons; or

(b) has been removed from a site because of actual or suspected contamination pursuant to a requirement or order of the Nova Scotia Department of Environment;

(6) "construction and demolition debris" means materials which are normally used in the construction of buildings, structures, roadways, walls and other landscaping material and includes, but is not limited to, soil, asphalt, brick, mortar, drywall, plaster, cellulose, fiberglass fibers, gyproc, lumber, wood, asphalt shingles, and metals and such other materials as may be permitted from time to time by regulations of the Province of Nova Scotia for disposal at a disposal site for construction and demolition debris;

(7) "curb" means that portion of the street right-of-way of a public street between the traveled portion of the right-of-way and the property line which parallels the street center line;

(8) "general recyclable material" or "general recyclables" means redeemable beverage containers, steel, tin or aluminum food containers or cans, glass food containers, jars and bottles, low density polyethylene bags and packaging, high density bags, containers and packaging, polycoat containers for milk, milk products, soya milk, concentrates or other liquids or powders, tetrapacks and any such other items as may, from time to time, be identified in public education documents distributed by the **[Municipality]** as suitable for municipal general recyclables collection;

(9) "hazardous waste" means waste that may be harmful to humans, animals, plant life or natural resources including, but not restricted to, industrial chemicals, toxic, flammable, corrosive, radioactive, reactive, pathological and PCB waste, oil, gasoline, paint solvent, wood preservatives, ink, battery acid, pesticides and insecticides;

(10) "hospital and pharmaceutical waste" means waste generated at hospitals, clinics, pharmacies, veterinary clinics, dentist offices and includes used needles, drugs, dressings, excluding pathological waste;

(11) "paper recyclable material" or "paper recyclables" means corrugated cardboard, newsprint, bond paper, glossy flyers and magazines, egg cartons, box board, computer paper and such other items as may, from time to time, be identified in public education documents distributed by the **[Municipality]** as suitable for municipal paper recyclables collection;

(12) "pathological waste" means any part of the human body excepting hair, nail clippings and the like, any part of a dead animal infected with a communicable disease, and non-anatomical waste infected with a communicable disease;

(13) "public education documents" includes newsletters, pamphlets, flyers or other material circulated by mail or delivery by or for the **[Municipality]**, and newspaper or radio advertisements by or for the **[Municipality]**;

(14) "reactive waste" means a waste that reacts violently with water or is readily capable of detonation or explosive reaction including calcium carbide;

(15) "recyclable material" or "recyclables" means paper recyclable material or general recyclable material as defined in this By-Law;

(16) "redeemable beverage container" means a container of less than 5 litres which contains or has contained a beverage and was sealed by the manufacturer after the beverage was placed in it, other than a container for milk, milk products, soya milk or concentrates;

(17) "residual garbage" means household waste other than:

(a) recyclable material;

(b) leaf and yard waste;

(c) compostables;

(d) material identified in this By-Law as material not to be placed for municipal collection or not to be deposited at a municipal solid waste management facility or material identified in this By-Law as to be placed for collection only upon special collection dates;

(e) waste or solid waste which is not placed for collection in accordance with the requirements of this By-Law, including limitations on the size, weight, volume, packaging or bundling identified herein or which is placed for collection contrary to limitations or specifications on garbage collection identified from time to time in public education documents distributed by the **[Municipality]**;

but notwithstanding subparagraphs (a) and (c) hereof, residual garbage may include compostables or recyclable materials to the extent separation of compostable and recyclable material was not reasonably possible for the waste generator because of the fusing or bonding together of materials in the state in which the waste generator received them or because of the reasonable cross-contamination of materials in the ordinary course of use by the waste generator if such contamination was unavoidable by the exercise of due diligence by the waste generator;

(18) "solid waste" includes recyclables, compostables, residual garbage, construction and demolition debris, leaf and yard waste, contaminated soil and any other waste or discarded tangible personal property;

(19) "septic waste" means the liquid and solid material removed from septic tanks, sewage treatment plants, and manholes, cesspools, privies and portable toilets;

(20) "tonne" means 1,000 kg.;

(21) "yard waste" or "leaf and yard waste" means vegetative matter resulting from gardening, horticulture, landscaping or land-clearing operations, including materials such as tree and shrub trimmings, plant remains, grass clippings, leaves, trees and stumps, but excludes construction and demolition debris or contaminated organic matter;

Municipal Solid Waste Management Facilities

7. The following sites are designated as municipal solid waste management facilities:

(1) for construction and demolition debris: **[identify construction and demolition debris facility, including applicable transfer stations, operated by or for the municipal unit, if any]**;

(2) for compostables: **[identify the composting facility, including applicable transfer stations, operated by or for the municipal unit, if any]**;

(3) for recyclable materials: **[identify the materials recovery facility, including applicable transfer stations, operated by or for the municipal unit, if any]**;

(4) for residual garbage: **[identify sanitary landfill sites, including applicable transfer stations, operated by or for the municipal unit, if any]**;

(5) for contaminated soil: **[identify contaminated soil disposal site, including applicable transfer stations, operated by or for the municipal unit, if any]**.

8. No person shall remove solid waste from a municipal solid waste management facility except as authorized by the **[Municipality]**.

9. Except for the placement of solid waste for collection in accordance with this By-Law, no person shall deposit, cause to be deposited or permit to be deposited solid waste at any place in the **[Municipality]** other than at a municipal solid waste management facility designated for the applicable type of solid waste or at a site approved for the purpose by the Province of Nova Scotia, provided however, that:

(1) backyard composting carried out in such manner as not to constitute a nuisance is permissible;

(2) subject to statutes, regulations or laws of the Province of Nova Scotia or Canada to the contrary, the unconcentrated disposal of waste trees, brush or portions thereof or other organic farm or forestry waste by decay on forest or farm land is permitted; and

(3) subject to statutes, regulations or laws of the Province of Nova Scotia or Canada or other by-laws of the **[Municipality]** to the contrary, the nuisance-free disposal of aggregate, soil, bricks, mortar, concrete, asphalt pavement, porcelain or ceramic materials as fill is permitted.

10. No person shall place, cause to be placed or permit to be placed in a municipal solid waste management facility any material or quantity of material in contravention of:

(1) any federal or provincial statute or regulation, including any regulation requiring the diversion of particular types or quantities of waste or waste products from particular types of solid waste management facilities;

(2) this By-Law or any resolution of Council concerning the use of a municipal solid waste management facility, including but not restricted to any resolution requiring the diversion of particular types or quantities of waste or waste products from a municipal solid waste management facility or a particular type of municipal solid waste management facility;

(3) the directions of the operator or staff of a municipal solid waste management facility with respect to the weighing, measuring, time, volume, method, location or other conditions of placement of solid waste, or particular types, loads or items of solid waste.

11. No person shall place, cause to be placed or permit to be placed at, in or adjacent to a municipal solid waste management facility any solid waste when the facility is not open or when the operator or municipal staff of the municipal solid waste management facility refuses to accept a load or loads or item or items of solid waste.

12. Except by contract with the **[Municipality]** or with the express approval in advance of the operator of the municipal solid waste management facility, given after the operator is fully informed as to the nature and origin of the solid waste, no person shall place, cause to be placed or permit to be placed in a municipal solid waste management facility

(1) any solid waste which is not permitted to be placed for municipal collection; or

(2) any solid waste generated outside the **[Municipality]**.

13. No person shall place, cause to be placed or permit to be placed in a municipal solid waste management facility any solid waste that is not separated as required by section **[14]** of this By-Law or which is falsely or misleadingly presented or packaged as solid waste of a particular kind, type, stream or place of origin or which is concealed within or inter-mingled with solid waste of another kind, type, stream or place of origin.

14. The operator or staff at a municipal solid waste management facility may refuse solid waste:

    (1) which contains waste for which that facility is not a designated site;

    (2) for which a tipping fee has not been set or negotiated with the generator or collector or for which a tipping fee has not been paid or for which tipping fee payment arrangements satisfactory to the **[Municipality]** have not been made;

    (3) which is being delivered by an unlicensed collector;

    (4) which the facility is unable to weigh, measure or process for any reason, including, but not restricted to, excessive inventory of solid waste or shortage of space, mechanical or electrical break down or labour dispute; or

    (5) which would be deposited or placed in contravention of this By-Law.

Removal, Separation and Storage of Solid Waste

15. No occupant or owner of property in the **[Municipality]** shall permit the accumulation of solid waste in or around the property to the extent that it is or is likely to become a nuisance or hazard to the public health.

16. Storage of food scraps and spoiled or waste food or foodstuff, except as disposed of by backyard composting, shall be removed from every property by the occupant no less than once every two weeks and disposed of according to law.

17. Owners and occupants are responsible for providing for the lawful collection and disposal of all solid waste that is not subject to municipal collection and for paying any associated collection, disposal or tipping fees.

18. Owners and occupants of property in **[Municipality]** shall separate solid waste at the time of generation, storage, placement for collection and disposal into uncontaminated separate solid waste streams as follows:

    (1) compostables;

    (2) general recyclables;

    (3) paper recyclables;

    (4) residual garbage;

    (5) construction and demolition debris;

    (6) contaminated soil;

    (7) solid waste of any type which is not accepted at a municipal solid waste management facility, each such type in its own stream; and

    (8) solid waste of any type which is only accepted on the occasion of special collections, or by contract or by express approval in advance of the operator of a municipal solid waste management facility, each such type in its own stream.

19. The owner and occupant of every property in the **[Municipality]** shall provide sufficient and adequate receptacles or containers for solid waste which may

accumulate from time to time on the property, and, without limiting the generality of the foregoing:

(1) food scraps and spoiled or waste food shall be stored in compostainers or in other receptacles or containers that are water-proof, impervious to domestic and wild animals and rodents and which are designed to avoid the entrapment of children;

(2) compostainers or other receptacles or containers used for storage of food scraps and spoiled or waste food shall not be placed or kept within 2 meters of a window or door situated on an abutting or adjacent property;

(3) recyclables and residual garbage shall be stored inside buildings or in receptacles or containers that are water-proof, impervious to domestic and wild animals and rodents, and which are designed to avoid the entrapment of children.

(4) bulk commercial containers used for the storage or collection of solid waste:

(a) shall be sturdily constructed, water-proof and impervious to domestic and wild animals and rodents;

(b) shall be equipped with a tight-fitting lid with a positive closing device which shall be kept closed except when the container is being loaded or unloaded;

(c) shall be designed to avoid the entrapment of children;

(d) shall be kept clean and in a good state of repair;

(e) shall be kept behind or beside the building which they service so as to reduce visibility from the street;

(f) shall be kept not less than 1.5 meters from the building which they service and not less than 1.5 meters from any property line of an abutting or adjacent property containing a residential dwelling unit;

(g) shall be placed only on surfaces which are hard, level and weather resistant; and

(h) shall not be loaded in a manner which permits waste to extend beyond the internal volume of the container when the lid is closed.

20. Bulk commercial containers used during construction or repair work need not comply with paragraphs **[(e) to (g)]** of subsection **[15(4)]** of this By-Law for temporary periods of not more than 6 months or until the completion of the construction or repair work, whichever is sooner.

21. Owners or occupants of premises serviced by a bulk commercial container:

(1) shall keep the area surrounding the container free from litter and waste; and

(2) shall cause the container to be emptied at least once every **[7 days OR 14 days]**.

22. Waste refrigerators and freezers shall either be stored inside an enclosed, locked or child-proof building or shall have their doors removed from the appliance.

23. The owner and occupant of every property in the **[Municipality]** which is eligible for municipal collection of compostables is responsible for providing, maintaining, repairing and replacing compostainers. Compostainers shall be provided by the owner as follows except as otherwise authorized by the Solid Waste Manager:

(1) Residential properties:

	(a)	single unit buildings:	1 compostainer
	(b)	two dwelling unit buildings:	1 compostainer
	(c)	buildings with three to five dwelling units:	2 compostainers
	(d)	buildings with six to ten dwelling units:	3 compostainers
	(e)	buildings with more than ten dwelling units:	4 compostainers
	(f)	mobile homes, for each unit:	1 compostainer
(2)	Commercial, institutional or industrial properties:		
	per tenant or occupant		1 compostainer

Municipal Collection

24. Council may by resolution provide for general municipal collection of solid waste by its own employees or by a contractor in some or all areas of the **[Municipality]** and, for greater certainty and without limiting Council's discretion to use different collection classifications, Council may limit collection to particular types of solid waste, to properties containing not more than a specified number of residential households, to properties which are not seasonal, and/or to commercial solid waste generators of a particular type or size or generating not more than a specified volume of solid waste, and may provide different collection services for any different class of waste generator.

25. The **[Municipality]**, by contract with solid waste generators ineligible for municipal collection of solid waste pursuant to the immediately preceding section of this By-Law, may provide collection of their solid waste and may, in such contract, vary any of the limitations or restrictions applicable to general municipal collection as set out herein, but except to the extent of express

variation by contract, such limitations or restrictions shall apply to waste generators whose solid waste is collected pursuant to this section.

26. Council may by resolution provide for special municipal solid waste collections on an occasional basis or may provide for municipal collection from a drop-off site, of particular types of solid waste, such as discarded Christmas trees, bulky items not eligible for regular municipal collection, leaf and yard waste, household hazardous waste or other specified solid waste and may limit such special collection to particular areas of the **[Municipality]**, to properties containing not more than a specified number of residential households and/or to commercial solid waste generators of a particular type or size or generating not more than a specified volume of solid waste.

27. Except to the extent authorized by contract with the **[Municipality]** or by public education documents distributed by the **[Municipality]** from time to time, including, but not restricted to, public education documents or notices published in connection with special collection days, persons placing solid waste for collection shall comply with the following:

(1) all solid waste shall be placed for collection within three meters of the curb, placed in such a manner as to interfere as little as possible with pedestrian traffic and snow removal;

(2) solid waste shall not be placed for collection before **[9:00 p.m. on the day before OR 6:00 a.m. on]** the collection date for that property for the appropriate type or stream of solid waste as advertised in public education documents distributed by the **[Municipality]** from time to time;

(3) uncollected solid waste and any waste scattered by animals, pest or weather shall be removed by the solid waste generator, owner or occupant

from the place where such solid waste was placed for collection not later than midnight on the day of collection;

(4) residual garbage shall be placed for collection in securely tied, black or green plastic disposable water-proof bags of a dimension not smaller than 66 cm. x 91 cm., nor greater than 75 cm. x 120 cm., and shall not exceed a weight of 25 kg. per bag and not more than 5 such bags shall be placed for collection on any one collection day;

(5) general recyclables shall be placed for collection in securely tied, blue-tinted or transparent plastic disposable water-proof bags of a dimension no smaller than 66 cm. x 91 cm., nor greater than 75 cm. x 120 cm., and shall not exceed a weight of 25 kg. per bag and not more than [5] such bags shall be placed for collection on any one collection date;

(6) paper recyclables shall be placed for collection in securely tied, plastic disposable water-proof bags of a dimension no smaller than 30 cm. x 45 cm. and not greater than 75 cm. x 120 cm. and shall not exceed a weight of 25 kg. per bag, except that corrugated cardboard may be flattened out and securely tied with twine or rope in convenient bundles which shall not exceed a weight of 25 kg. per bundle;

(7) compostables shall be placed for collection in compostainers;

(8) bulky items placed for special collection shall not exceed 50 kg. in weight for any one item or 150 kg. for all items for any one dwelling unit on any one special collection date and no individual item shall measure greater than 1.5 meters in any dimension;

(9) refrigerators and freezers placed for special collection shall:

(a) have coolant professionally removed with "coolant removal sticker" attached and visible on the appliance; and

(b) have the door removed from the appliance.

(10) leaf and yard waste placed for special collection shall, in the case of leaves, be placed in securely tied, orange plastic disposable water-proof bags of a dimension no smaller than 66 cm. x 91 cm., nor greater than 75 cm. x 120 cm., and shall not exceed a weight of 25 kg. per bag and not more than 8 such bags shall be placed for collection on any one special collection date, and in the case of brush and tree branches, shall be bundled in bundles not exceeding 1.5 cm. in length or 25 kg. in weight and individual limbs shall have a diameter not exceeding 5 cm. in diameter;

(11) Christmas tree waste shall not have any decoration, ornament, wires or nails attached and shall not exceed 3 meters in length;

(12) subject to maintaining uncontaminated separate solid waste streams, solid waste other than compostables may be placed for collection in waste collection boxes located within 3 meters of the curb of the public road or street provided that:

(a) the box has a securely hinged lid or lids;

(b) the box has a support to hold the lid open while the contents are being emptied;

(c) the box is designed to avoid the entrapment of children; and

(d) the solid waste is placed within the box in accordance with all other requirements of this section, including placement in specified bags.

28. No person shall place solid waste for collection on a property other than a property owned or occupied by such person or in respect of which the person has obtained the consent of the owner or occupier for that purpose.

29. Except to the extent authorized by contract with the **[Municipality]** or by public education documents distributed by the **[Municipality]** from time to time, no person shall place for collection:

(1) hazardous waste;

(2) hospital and pharmaceutical waste;

(3) asbestos;

(4) septic waste;

(5) hot ashes;

(6) dead animals;

(7) industrial waste, including non-residential farm, forestry or fishing waste;

(8) tires;

(9) waste generated outside the **[Municipality]**; or

(10) other materials or solid waste as may be identified as unacceptable for collection in public education documents distributed by the **[Municipality]** from time to time.

30. Except as authorized by the **[Municipality]**, no person shall remove recyclables or other solid waste placed or apparently placed for municipal collection by waste generators, owners or occupants and all recyclables are the property of the **[Municipality]** from the moment of placement for municipal collection. Nothing in this section relieves an owner or occupant from the duties set out in subsection **[(3)]** of section **[23]**.

Solid Waste Collectors

31. No person shall engage in the business of collecting or transporting solid waste to a solid waste management facility in the **[Municipality]** unless the person holds a current Collectors License from the **[Municipality]** for that purpose, obtained or renewed before January 20 in each calendar year.

32. The application for a Collectors License shall be made in writing, in duplicate, on such form as may be specified by the Solid Waste Manager from time to time, and signed by the person applying therefore. Every application for a Collectors License, including each annual renewal, shall contain the following information:

    (1) the name, address and phone number of the applicant;

    (2) the provincial motor vehicle registration number and description by make, model, and year of any vehicles to be used by the applicant in connection with the collection or transportation of solid waste in the **[Municipality]**;

    (3) a description of the types of solid waste for which a Collectors License is sought;

    (4) an annual license fee of **[insert amount]**;

33. Licensed collectors shall use collection and transportation equipment which:

    (1) is insured for third party liability in such amount as may be required from time by the Solid Waste Manager;

    (2) is registered under the *Motor Vehicle Act* and which complies with all provisions of that *Act* or of any other applicable statute or regulation in effect from time to time;

    (3) is driven by operators with valid operators' permits of the requisite class for that type of vehicle

(4) is designed and utilized in a manner which prevents any solid waste or liquid waste from falling out, being spilled, blown or scattered from the vehicle during collection or transportation and, in particular:

(a) must be equipped with a tailgate or other restraining device which shall be closed while the vehicle is in motion;

(b) must be equipped with a cover, tarpaulin or other adequate protective device to prevent littering during collection or transportation of solid waste;

(5) if used in the collection of more than one type of solid waste, be designed, constructed and used in such a manner as to prevent cross-contamination between different solid waste streams;

(6) displays the name of the Licensed collector in characters not less than 2.5 cm. in height;

34. Licensed collectors shall:

(1) refuse collection of solid waste which is not separated or otherwise placed for collection in accordance with the requirements of this By-Law;

(2) haul in separate loads solid waste collected in different municipal units, except as may be expressly authorized by the Solid Waste Manager;

(3) comply with the provisions of this By-Law, including but not restricted to those concerning the placement or deposit of solid waste at municipal solid waste management facilities;

(4) collect solid waste from the right-hand side of the road only, except on one-way streets;

(5) attend courses or training seminars, as stipulated from time to time by the Solid Waste Manager regarding the collection and transportation of solid

waste, the use of solid waste management facilities and the public education of solid waste generators;

(6) comply with any directives or restrictions on collection or transportation routes, or the timing, procedures or methods to be utilized in connection with the collection or disposal of solid waste at a municipal solid waste management facility as may be specified by the Solid Waste Manager from time to time;

35. The Solid Waste Manager may refuse to issue or renew or may revoke or suspend a Collectors License for breach of this By-Law or of the terms or conditions of a License. The Solid Waste Manager may suspend a Collectors License on reasonable and probable grounds without hearing or notice in the event of a willful breach of this By-Law or a loss or apparent loss of licensing, registration or insurance, in which event an interim suspension shall remain in effect for a period of up to 30 days pending a hearing. In all other instances, a refusal to issue or renew or a revocation or suspension of the License shall only be made by **[Council]** after convening a hearing upon **[advance notice OR ___days notice]** to the applicant or Licensed Collector by registered mail or personal service.

Finance

36. The following tipping fees shall be payable for the deposit of uncontaminated, separated solid waste generated within the **[Municipality]** at municipal solid waste management facilities:

Type, Category or Stream of Solid Waste	Charge per Tonne
Residual garbage	**[insert amount]**
General recyclables	**[insert amount, if any]**
Paper recyclables	**[insert amount, if any]**
Compostables	**[insert amount, if any]**
Construction and demolition waste	**[insert amount]**
Leaf and yard waste	**[insert amount]**
Bulky items	**[insert amount, if any]**
Contaminated soil	**[insert amount]**

37. By contract with persons whose solid waste is partially or entirely ineligible for general municipal collection, and to the extent of such ineligibility, the **[Municipality]** may reduce the tipping fees set out in the immediately preceding section of this By-Law for solid waste generated within the **[Municipality]** in order to achieve economies of scale or efficiencies in solid waste management, in order to achieve waste diversion objectives of the **[Municipality]** or of the **[insert name of region, such as "Eastern Region", "South Shore Region", etc.]** established under the Solid Waste - Resource Management Regulations of the Province of Nova Scotia, and without limiting the generality of the foregoing, in negotiating tipping fees by contract, the **[Municipality]** may consider the nature, volumes, uniformity, recyclability or marketability of solid waste generated by particular waste generators, the presence or absence of excess capacity at municipal solid waste management facilities for particular types of

waste and the desirability of spreading the capital cost of such facilities, including decommissioning costs, to a larger group of users or any other factor that might reasonably affect the **[Municipality's]** cost or cost per tonne of collecting or disposing of solid waste.

38. In regards solid waste for which a tipping fee is not set in this By-Law, including, but not restricted to, solid waste generated outside the **[Municipality]**, the **[Municipality]** may negotiate a tipping fee by contract with particular solid waste generators, Licensed Collectors, other municipalities or persons and/or may by resolution set a tipping fee of general application, subject to variation by contract.

39. The **[Municipality]** may, by contract, agree to accept limited quantities or proportions of improperly separated or cross-contaminated waste, subject to the imposition of contract penalties for exceeding such levels.

40. The **[Chief Administrative Officer OR Clerk]** or his or her designate shall have the authority to make contracts on behalf of the **[Municipality]** in regards the disposal of solid waste at a municipal solid waste management facility and in regards the collection of solid waste from individual generators, provided however, that all such contracts, except those expressly approved by Council, shall be for **[a fixed term of one year or less or for]** an indefinite term, and **[if for an indfinite term]** shall contain or be deemed to contain a provision entitling the **[Municipality]** to terminate the contract without notice for cause or on 30 days notice without cause.

41. Tipping fees for solid waste which is subject to general municipal collection, shall not be levied or collected from the solid waste generator or the solid waste collector at the time of collection or deposit at the municipal solid waste management facility but shall be estimated during the annual budget process of

the **[Municipality]** and apportioned equitably by Council amongst owners or occupants of property to whom the service is available according to ascertainable criteria based on flat rates per user or average costs for particular user classifications, or some combination thereof, and shall be charged and collected:

(1) in the case of properties subject to municipal residential or commercial property tax or business occupancy tax, as a separate user charge for waste collection and disposal on the municipal tax bill issued to the owner;

(2) in the case of others, by separate invoice for waste collection and disposal; and

(3) in the event of non-payment by the due date, such waste collection and disposal charge shall bear interest equivalent to the interest rate levied against outstanding property taxes and may be collected as an ordinary debt and, in the case of charges invoiced pursuant to subsection (1) of this section, shall constitute a first lien on real property and may be collected, together with pre-judgment interest from the date due, in the same manner as a tax.

42. Each fiscal year the Council shall determine an amount to be paid into a capital reserve fund for the decommissioning and closure of municipal solid waste management facilities.

Enforcement and Penalty

43. Proof that solid waste that was deposited or placed somewhere in contravention of this By-Law originated from a particular person shall be evidence that the person so deposited or placed it, or caused or permitted it to be so deposited or placed, in the absence of evidence to the contrary.

44. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

45. Any person who contravenes sections **[insert section numbers of Payment in lieu of Prosecution Offences]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading_____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this SOLID WASTE BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Solid Waste By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

325 The council may make by-laws respecting solid waste, including, but not limited to,

(a) prohibiting persons from depositing any solid waste except at a solid-waste management facility;

(b) regulating the disposal, collection and removal of solid waste;

(c) regulating the use of containers for solid waste;

(d) licensing persons engaged in the business of removing or collecting solid waste, regulating the operation of the business and prohibiting, in whole or in part, the operation of such a business by a person not holding a licence;

(e) prescribing the materials that may or may not be deposited at a solid-waste management facility of the municipality or in which the municipality participates;

(f) prescribing the terms and conditions under which a deposit may be made at a solid-waste management facility of the municipality or in which the municipality participates, including the amount and manner of payment of any fees and charges to be paid for the deposit;

(g) requiring the separation of solid waste prior to collection;

(h) setting fees or charges for removal of solid waste;

(i) requiring compliance with a waste resource diversion strategy;

(j) respecting anything required to implement the integrated solid-waste resource management strategy of the municipality.

326 (1) A municipality may provide compensation to an area, to the property owners in an area or to the residents of an area in which a solid-waste management facility is located in amounts, and under the conditions, determined by the council.

(2) A municipality may contract with other municipalities or persons for the use of any component of its solid-waste management program.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- The model by-law governs the solid waste management scheme of the municipal unit, and the by-law is designed to allow the unit to set parameters of general application for those who receive municipal collection, but to provide for variation of those parameters by contract for other generators. Specifically, the by-law regulates the manner in which waste is to be deposited at the various municipal solid waste facilities, imposes obligations on property owners to have waste removed periodically, regulates the manner in which waste is separated and stored, provides for Council to engage in general collection of solid waste and to enter into collection and disposal contracts with individual waste generators not eligible for municipal collection, regulates the manner in which waste is placed for collection, prohibits scavenging or cherry-picking of recyclables, provides a licensing scheme for waste collectors, and stipulates tipping fees and a means of collecting tipping fees.

- The definitions section of the by-law is detailed, and it is important to review the definitions carefully and make any changes necessary to achieve the objectives of the municipal unit as set out in the substantive provisions. For example, the definition of "residual garbage" (s.2(17)) allows the generator to include cross-contaminated materials (recyclables and compostables) to the extent that

separation cannot reasonably be achieved. The definition of compostables in section 2(2) of the model by-law recognizes that those who have municipal collection of compostables can include meat and dairy food wastes in their compostainer, whereas those who use backyard composting will have to place these wastes in the residual garbage stream.

- Section 5 prohibits putting solid waste and any place other than a municipal facility or a facility approved by Department of Environment. The section does specifically exempt from this restriction backyard composting (which is narrowly and specifically defined by reference to the definitions of "backyard composting" and "composting" in s.2), unconcentrated organic decay of forest and farm waste, and the use of specified inert material as landfill.

- Sections 6-10 prohibit deposit at a municipal facility, materials that are not separated, or which are disguised as another type of waste, or which were generated outside the municpal unit, or which do not conform with limits specified in the by-law for material that can be placed for collection (subject to getting approval of the facility operators or having a contract with the municipality), or which are banned by the Province or the municipality, or which are deposited when the site is closed or the facility operators have refused the waste.

- Sections 11-13 prohibit undue accumulation of waste, and expressly obligate owners and occupants to dispose of all solid waste at their expense, even if it is not subject to municipal collection.

- Section 14 requires solid waste separation into various streams, which are defined terms in s. 2. The model by-law presumes 4 principal streams of solid waste (compostables, paper recyclables, general recyclables and residual garbage).

- Sections 15-18 contains regulations on the storage of waste between collection dates, including storage in bulk containers typically used by institutional, commercial, or industrial generators.

- The obligations of owners to provide compostainers for municipal collection of compostables is set out in section 19 including a table identifying how many compostainers are required for different types of property. These are arbitrary limits, and municipal units are likely to vary these according to their own experience of what works in their unit. Additionally, in the event the municipality does not provide compostables collection for multiple unit apartments or other

enterprises, this section should be tailored to match the limits on general collection of compostables in that regard.

- Section 19 allows Council to specify the extent of municipal solid waste collection and to make distinctions in collection service by area, solid waste type, nature or classification of land-use (residential vs. industrial, for example), and the size of the generator (e.g. single unit dwellings vs. multiple unit apartment buildings). It also allows the Municipality to collect through a contractor or by its own forces. Special collections for spring and fall clean-up of bulky items is provided for in s. 22.

- For those not serviced by general municipal collection, collection by contract between the generator and the municipal unit is authorized but not required by s. 21. By contract the municipal unit can vary the requirements that would apply to general collection.

- The detailed requirements for placing material for municipal collection are spelled out in s. 22. While the specifications utilized in the model by-law are typical, it is very important that these be reviewed carefully by staff to determine consistency with each unit's solid waste operations and existing collection contracts.

- Section 24, when combined with the definition of "curb" and the section 23 (1), effectively means that homeowners must place their waste for collection next to a public road (even if they have a seasonal or other dwelling located on a private road) and must make arrangements with a land-owner next to the road to place their waste there. Some municipalities may prefer to provide bulk containers, or to provide collection down private roads, and the by-law should be modified accordingly in that event.

- The materials banned from general municipal collection are identified in section 25, and these should be tailored by each municipal unit to suit its system.

- Section 26 prohibits cherry-picking of recyclables after they have been placed for municipal collection. This does not prevent generators from using Enviro-Depots, or from selling recyclables to private industry, and it does not apply to private collectors of solid waste from businesses which are not subject to municipal collection.

- Sections 27-31 provide for licensing of private collectors. These provisions are useful for municipalities in which a significant amount of waste is not subject to

general collection. Collectors Licenses can facilitate the co-operation of waste haulers in pressuring their customers to properly separate solid waste, in much the same way that contract provisions with the general municipal collector can facilitate pressure on generators. A hearing is required in order to revoke or suspend or decline to renew a Collectors License, except for a limited temporary suspension power given to the Solid Waste Manager.

- The Finance sections of the By-Law, sections 32-38, set tipping fees of general application and identify how tipping fees and collection charges will be collected from the public. Each municipality has its own system. Increasingly, municipal units approach their solid waste services with institutional, commercial and industrial generators as a business activity and the model by-law is intended to allow the municipality to reduce the tipping fee by contract with particular generators in order to achieve efficient use of their landfill sites or materials recovery facilities. Under the model By-Law, staff can make month-to-month contracts regarding solid waste, or for a fixed term of up to one year, but only the Council can make contracts which commit the municipal unit to a binding arrangement into the future. This ensures that Council retains full control over the municipal unit's activities without hampering the ability of staff to run the day to day solid waste business dealings of the municipality. Legal counsel should be consulted on this issue, as the *M.G.A.* does not address it specifically.

- Many municipal units do not charge a tipping fee for municipally collected waste, and simply spread the cost to taxpayers through the general rate. Others offer different services for different areas or types of generator and prefer to maintain some user charge component to their solid waste services for municipal collection customers. The financial model contained in the By-Law is to set a general tipping fee payable by those dropping off waste at municipal sites, and to apply that same tipping fee, along with a collection fee, to those generating municipally collected waste by calculating a user charge based on class averages billed to collection customers as a separate charge on the tax bill (or by separate invoice for non-taxpayers who receive municipal collection). Some of the cost of solid waste management can be borne by the general rate or by area rates if the municipal unit wishes, and different collection costs for different classes of generator can also be reflected in different user charges if the municipal unit wishes. An alternative approach would be to amend s. 37 to exempt municipally collected waste from a tipping fee, and to finance the collection and disposal of municipally collected waste entirely through the general/area rate tax system. However, such an approach may lead to cross-subsidization by general ratepayers of generators who are the subjects of grants in lieu of taxes, as it is not possible to levy a user charge only against those who are subjects of grants in lieu of taxes

according to a recent Court decision: ***Re Antigonish*** [2000] NSR (2d) TBEd. JA.002 [temporary citation of Maritime Law Book]. The finance sections of the model By-Law should be reviewed carefully with legal counsel and with the municipality's senior financial officer.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[40]** for general offences and s. **[41]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [4]
Civic Addressing By-Law

1. This By-Law is entitled the "Civic Addressing By-Law".

2. Nothing in this By-Law shall be construed as authorizing non-compliance with any laws, regulations, by-laws, lawful orders or directives pursuant to any other statute, regulation or statutory or regulatory authority that may require the posting of civic numbering on structures or properties or the posting of street names on private roads or which may specify standards in respect of the posting of civic numbers or street names.

3. In this By-law:

   (1) "building" means a structure used or intended to be used to support or shelter any use or occupancy, except a structure the use of which is accessory to the use of another structure on the same lot and except a structure which, if it were now being built for the first time, would not require a Building Permit to authorize its construction and includes an incomplete building once the footings have been constructed;

   (2) "Civic Addressing Coordinator" means the **[e.g. Building Inspector OR Development Officer]** unless some other person has been appointed by **[the Chief Administrative Officer *OR* Council]** to administer this By-Law;

   (3) "civic number" means the number assigned to a lot or building by this By-Law or by the Civic Addressing Coordinator;

   (4) "owner" has the same meaning as the owner of property in the Municipal Government Act or successor legislation from time to time;

(5) "private road" means any street, road, lane, bridge or other thoroughfare accessible to motor vehicles which is not a street as defined in subsection (6) and which serves as a principal vehicular access to three or more dwelling units or buildings;

(6) "street" means any public street, highway, road, lane, bridge, or thoroughfare accessible to vehicular traffic owned by the Province of Nova Scotia, the **[municipality]** or any other municipality including a public highway;

4. A civic number that was posted on a lot or building or that was customarily in use as a mailing address for a lot or building on the date of first reading of this By-Law is hereby assigned to that lot or building until and unless the Civic Addressing Coordinator, by written notice to an owner, otherwise directs.

5. The Civic Addressing Coordinator shall be responsible for the further assigning of civic numbers to lots or buildings and shall keep or supervise the keeping of a property information record or system identifying all civic numbers assigned by the **[municipality]**. The Civic Addressing Coordinator may assign civic numbers to lots or buildings for which subdivision approval, or a development or building permit is sought or obtained. The Civic Addressing Coordinator is not be obliged to assign civic numbers to undeveloped lots, and may assign more than one civic number to a lot.

6. The Civic Addressing Coordinator may, by written notice to an owner, change or reassign civic numbers where reasonably necessary to avoid potentially confusing numbering discontinuities or irregularities and to assure an adequate supply of civic numbers for existing and future development.

7. An owner shall not post or permit to be posted a number which is not assigned to the lot or building on which the number is posted.

8. The owner of a lot on which a building is located shall keep posted on the lot or building the assigned civic number in the following manner:

(20) civic numbers shall be posted in a location which is not obstructed from view when viewed from the closest place on the traveled portion of the principal street or private road upon which the lot or building is situated or from which it has access and from all points in at least 10 metres in either direction from that place, except that an intervening tree trunk or a vertical pole or post shall not alone be considered an obstruction for purposes of this subsection;

(21) civic numbers shall face towards the street or private road upon which the lot or building is situated and which forms part of the civic address for the lot or building except that double-sided signage may be used, in which event the civic number shall be on both sides of the sign and perpendicular to the street or private road;

(22) civic numbers shall be in Arabic numerals;

(23) the bottom of the numerals shall be a minimum of **[e.g. 1.2 meters]** above grade;

(24) the colour of the numerals shall clearly contrast with the background upon which the numbers are displayed;

(25) the height of the numerals shall not be less than the following dimensions for the specified viewing distances measured from the place where the civic number is posted to the closest edge on the traveled portion of the principal street or private road upon which the lot or building is situated:

(a) viewing distance of 15 metres or less: minimum numeral height of 65 millimetres;

(b) viewing distance of between 15 and 30 metres: minimum numeral height of 100 millimetres;

(c) viewing distance of between 30 and 45 metres: minimum numeral height of 125 millimetres;

(d) viewing distance of between 45 and 60 metres: minimum numeral height of 150 millimetres;

(e) viewing distance of between 60 and 75 metres: minimum numeral height of 175 millimetres; and

(f) viewing distance of between 75 and 90 metres: minimum numeral height of 200 millimetres;

(26) where the viewing distance measured from the place where the civic number is posted to the closest edge of the traveled portion of the principal street or private road upon which the lot or building is situated is 15 metres or more, the sign shall be artificially illuminated at night to be visible from the street or road, except if there is no electrical service to the lot or building;

(27) in the event that

(a) a building is not located within 90 metres of the closest edge of the traveled portion of the principal street or private road upon which the building is situated;

(b) the view of the civic number would be obstructed if it were posted on the building; or

(c) for any other reason an owner does not post the civic number on the building

the civic number shall be posted on a gatepost, signpost or other structure on the lot on which the building is situated, excluding a utility pole for electrical, telephone or other utility service, , on the same side of the road, and at least 3.5 metres from the closest edge of the traveled portion of the street or private road upon which the building is situated.

9. The owner(s) of a private road which intersects a street shall take the following steps to erect and maintain a sign identifying the private road by name:

(1) obtain from the Civic Addressing Coordinator the name assigned to the private road by the **[municipality]**, and if no name has been assigned, request the **[municipality]** to assign a name;

(2) apply for, and use best efforts to obtain, permission to erect an identifying sign and a signpost from any person or regulatory authority whose permission is required by law to erect an identifying sign and a signpost;

(3) where permission is obtained in accordance with subsection (2), erect, maintain in good condition, and replace as necessary, a sign and signpost at the intersection of the private road and the street in a manner consistent with any conditions attached to such permission and other lawful requirements, and, except to the extent of any inconsistency with such conditions or other lawful requirements, in accordance with the following standards:

(a) lettering of the private road name to be **[insert standardized height not less than 100]** millimetres in height, in **[insert font style]** font style **[and in upper case character]**;

(b) lettering to be in **[insert colour]** against a **[insert colour]** background **[with a [insert colour]** border of **[insert border width]** millimetres in width;

(c) bottom of the lettering to be between **[2 and 3 OR some other standard]** metres above grade;

(d) signpost to be made of **[pressure treated lumber with cross-sectional dimensions not less than 85 millimetres by 85 millimetres or rigid non-ferrous metal OR some other standard]** and sufficiently fastened to the ground to hold the sign rigidly in place and to prevent turning of the sign in the wind;

(e) to the extent possible, the signpost is to be located in an unobstructed line of sight for vehicles approaching the private road from either direction along the street and to be set back a minimum of **[3.5 metres]** from the traveled portion of the street.

10. Upon application by an owner, the Civic Addressing Co-ordinator may provide written authorization for signage for civic numbers or street names to vary from the standards contained in the By-Law, with or without conditions, when:

(1) compliance with the standards is not reasonably possible, having regard to the physical features of the site or otherwise; or

(2) compliance would not as effectively meet the objectives of this By-Law as an alternative approach.

An authorization under this section may be revoked or varied by the Civic Addressing Co-ordinator. Owners shall comply with any conditions contained within authorizations granted under this section.

11. In the event of contravention of this By-Law, in addition to any prosecution or other remedy, the **[municipality]**, may

(1) prepare a notice in writing to an owner to undertake remedial action including but not limited to the posting or re-posting of a civic number on a building or lot or the erection of signage for a private road;

(2) serve the notice upon an owner, which notice shall be deemed to have been sufficiently served if posted on the owner's building, lot or property;

(3) if the remedial action has not been undertaken or completed within 14 days, the **[municipality]** may enter upon the private property of an owner and undertake the remedial work, and charge and collect the costs of the work, with interest from the date of the completion of the work until the date of payment, as a first lien on the property affected.

12. Any person who violates any provision of this By-law is guilty of an offence punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

13. Any person who contravenes section **[8]** of this By-Law and who is given notice of the contravention may pay to the Municipality, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

14. The effective date of this By-Law is **[insert date, which must be no earlier than the projected date of advertisement of the passage of the By-Law]**.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this CIVIC ADDRESSING BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Civic Addressing By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

313 (1) The council may

(a) by by-law, adopt a system for assigning civic numbers to buildings;

(b) by by-law, require owners or occupiers of property to post the correct civic number prominently on their properties, with power to prescribe the size, design and location of the civic number that the owner or occupier is so required to post, and the manner in which it is posted;

(c) by policy, name or rename any street or private road;

(d) post the name of any street or private road, including posting the name on private property;

(e) by by-law, require the owner of land that is a private road to

(i) apply for permission to erect a sign or signpost that identifies the road by the name assigned to it pursuant to clause (c) to any person or authority whose permission is required by law to erect the sign or signpost and use the owner's best efforts to obtain such permission, and

(ii) erect a sign or signpost of such size and design, in such location and in such a manner as is prescribed by the by-law, where permission is obtained to erect the sign or signpost in accordance with subclause (i).

172 (1) A council may make by-laws, for municipal purposes, respecting

(l) the enforcement of by-laws made under the authority of a statute, including

(i) procedures to determine if by-laws are being complied with, including entering upon or into private property for the purposes of inspection, maintenance and enforcement,

(ii) remedies for the contravention of by-laws, including undertaking or directing the remedying of a contravention, apprehending, removing, impounding or disposing, including the sale or destruction, of plants, animals, vehicles, improvements or other things and charging and collecting the costs thereof as a first lien on the property affected,

...

507 Where a council, village commission, committee or community council or the engineer, the administrator or another employee of a municipality lawfully causes work to be done pursuant to this Act, the cost of the work, with interest at the rate determined by the council, by policy, from the date of the completion of the work until the date of payment, is a first lien on the property upon which, or for the benefit of which, the work was done.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- Each municipal unit may wish to consult with the Province's E.M.O. on the status of Provincial regulations. This draft has been prepared after consultation with E.M.O. and review of preliminary provincial draft regulations as at December 1999.

- The by-law creates a municipal Civic Addressing Coordinator who is responsible for keeping track of civic numbers, and assigning new or different numbers.

- It requires homeowners to post civic numbers according to the standards set in the model by-law. The standards for posting civic numbers in this model by-law do not have to conform with colour or font-style requirements, but are regulated for size and sight line to ensure visibility for emergency vehicles. Regulation of colour and font-style was not attempted due to anticipated resistance on aesthetic or other grounds, particularly from those who already have posted civic numbers. Sizing of the numerals is designed to allow for a minimum of 65 mm with 25 mm increase in size for each 15 metres in distance away from the roadway. (s. 8(6)).

- The preferred standard for height of numerals is 1.2 metres minimum, however this will may create resistance where homeowners have posted civic numbers on mailboxes.(s.8(4)).

- Council should consider if it requires artificial illumination of numbers. The model is drafted to require illumination where the posting of the number is more than 15 metres from the edge of the roadway (s. 8(7)) The draft by-law does not specify that numerals be painted with reflective paint, because of expected resistance on aesthetic grounds particularly from those with established numerals. (s.8(5)) However, many emergency services providers would welcome a requirement for reflective paint.

- The model by-law requires a signpost, gatepost or other structure near the road to display the civic number when the building is 90 metres away or the view is obstructed (s.8(8)).

- The model by-law also requires owners of private roads that serve as access roads to dwellings or other buildings to post the street name on a sign. The model by-law contemplates regulating all style features of street signs, to allow for

consistency with other street signage that may be in use by the municipality. Note that private road names must be created by a Policy of Council.

- Standards for civic numbering and street signage can be waived by the Co-ordinator (s.10).

- Authority is provided for the Municipality to enter on private property to post such street signs, and then to recover the cost as a lien like a tax, however it is recommended that legal counsel be consulted before attempting such a step. Interest on these costs can only be claimed if Council has created a Policy pursuant to s. 507 of the *M.G.A.* (s. 11).

- The model by-law contemplates that failing to post a civic number would be a summary ticket offence (s.13).

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[12]** for general offences and s. **[13]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*. It is anticipated that the Province will soon have a regulation requiring civic addressing which will be enforceable by a summary offence ticket with a penalty, including victim surcharge and tax of $675.

- An "effective date" section (s. 14) is included, so that advance warning is given of the duty to post the necessary signage.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [5]
Noise By-Law

Title

1. This By-Law is entitled the "Noise By-Law".

Definitions

2. In this By-law:

   (1) "construction" includes erection, alteration, repair, dismantling and demolition of structures and includes structural maintenance, hammering, land clearing, moving of earth, rock or felled trees, rock breaking, grading, excavating, the laying of pipe or conduit whether above or below ground level, working with concrete, alteration or installation of any equipment, the structural installation of construction components or materials in any form whatsoever, the placing or removing of any construction related materials and includes any related work, but does not include blasting;

   (2) "construction equipment" means any equipment or device designed and intended for use in construction or material handling including but not limited to air compressors, air tracks, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, backhoes, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders and other material handling equipment;

(1) "emergency response personnel" includes police, fire departments or brigades, registered emergency services providers, search and rescue personnel, provincial, regional or municipal Emergency Measures Organizations, ambulance or emergency health services providers and includes volunteer or military personnel responding to an apparent condition of emergency.

(3) "motor vehicle" includes an automobile, motorcycle and any other vehicle propelled or driven otherwise than by muscular, gravitational or wind power, except a motorized wheelchair, a vehicle running only upon rails, a farm tractor or a self-propelled implement of husbandry, and an off-highway vehicle as defined from time to time in the *Off-Highway Vehicles Act*;

(4) "point of reception" means any point on premises **[OR premises containing a dwelling unit]** where sound, originating from other premises, including other dwelling units, is received;

(5) "public address system" means any system comprised of one or more of the following and in any combination: loudspeaker, amplifier, microphone, turntable, reproducer, receiver or tuner, where such equipment is part of a system used to reproduce or amplify sound;

(6) "recreational vehicle or boat" means an off-highway vehicle as defined in the *Off-Highway Vehicles Act* and any motorized water-craft except a commercial fishing boat or a boat used as a ferry or in a commercial enterprise.

Prohibitions and Interpretations

3. No person shall engage in any activity which is likely to generate noise or sound that unreasonably disturbs the peace and tranquility of a neighbourhood. For the purpose of this section, evidence that one neighbour is unreasonably disturbed by a noise is prima facie evidence that the neighbourhood is unreasonably disturbed by the noise.

4. Without limiting the generality of section **[3]**, the activities or noises listed in Schedule "A" during the proscribed times as set out therein are deemed to be activities which are likely to generate noise or sound that unreasonably disturbs the peace and tranquility of a neighbourhood if the sound resulting from the activity is audible at a point of reception.

5. No person shall generate, or cause or permit to be generated, a noise or sound that is measurable in A-weighted sound pressure level at a point of reception

   (1) in excess of 70 dBA, before 7:00 a.m. or after 10:00 p.m.;

   (2) in excess of 90 dBA, at other times.

Fixed Exemptions

6. This By-Law does not apply to:

   (2) emergency response personnel engaged in the execution of their emergency response duties; or

   (3) persons acting at the request of emergency response personnel during an actual or apparent emergency condition.

   and, without limiting the generality of the foregoing, noises caused by emergency response vehicles and air ambulances are specifically exempt from prosecution.

7. Notwithstanding any other provisions of this By-law, this By-law shall not apply to or proscribe:

(1) the emission of sound in connection with any organized traditional, festive or religious activity celebrating:

(a) Canada Day;

(b) New Year's Eve; or

(c) religious holidays;

(2) the emission of sound in connection with calls to worship, ringing of bells at places of religious worship, or services of religious worship;

(3) noise caused by the Municipality, the Government of Canada, the Province of Nova Scotia, the Nova Scotia Power Corporation, and telecommunication companies and their contractors and employees when acting in the reasonable execution of their duties between 7:00 a.m. and 10:00 p.m. in the day;

(4) noises in connection with organized athletic or recreational activities in municipal or public park areas, arenas or community centres between 5:00 a.m. and midnight;

(5) noises from the organized and scheduled activities and events of festivals, parades, street dances, rallies, or other community activities funded, sponsored or licensed by the Federal or Provincial government or the **[Municipality]**;

(6) noises emitted by audible pedestrian signals;

(7) noises resulting from the operation of any refrigeration unit which is attached to a refrigeration truck if the refrigeration truck is parked **[insert locations permitted]**; and

(8) noises from the operation of off-highway vehicles at sites designated for that purpose under the **[Municipality's]** Off-Highway Vehicles By-Law.

Grant Of Exemptions By Council

8. Any person may make application to Council to be granted an exemption from any of the provisions of this By-Law with respect to the emission of noise from an industrial, institutional, commercial or community activity for which that person might otherwise be prosecuted. Council, by resolution, may refuse to grant the exemption or may grant the exemption applied for or any exemption of lesser effect. Any exemption so granted shall:

(1) specify a time period of not greater than **[15 years]** during which the exemption shall be effective;

(2) shall be confirmed in writing by the **[CAO OR By-Law Enforcement Officer]** before becoming effective; and

(3) shall include such terms and conditions as Council deems appropriate.

9. In deciding whether or not to grant an exemption under section **[8]** or in determining terms or conditions of the exemption, Council shall give consideration to:

(1) the social or economic benefit of the proposed activity to the municipality;

(2) the volume, nature, duration and consistency of noise emission from the proposed activity;

(3) the proximity and nature of abutting or adjacent land uses;

(4) the hours of operation of the proposed activity;

(5) any other factor relevant to balancing the interests of the applicant in the proposed activity against the interests of those persons who might be disturbed by the proposed activity.

10. Applications for an exemption for an activity of less than **[14 days]** duration do not require a public hearing pursuant to this section or notice pursuant to section **[11]**, but all other exemptions, renewals of exemptions, or amendments expanding the scope of an exemption shall only be granted after a public hearing at which Council shall give the applicant and any person interested in the application an opportunity to be heard.

11. **[Advance notice OR ___days notice]** of the time, date and purpose of a public hearing pursuant to section **[10]**, shall be mailed by the applicant to the assessed owner or owners, as shown in the records of the Assessment Office, of each property which contains a building located within **[150 meters]** of the property which will be the subject of the hearing, except that where the exemption is sought for an outdoor event not conducted at a fixed location, notice may be given by advertisement, of not less than **[25 square cm.]** in size, in a local newspaper of mass circulation.

12. Any contravention of the terms or conditions of an exemption pursuant to section **[8]** shall constitute a contravention of this By-Law. In addition to any other available remedies for such contravention, the **[CAO OR By-Law Enforcement Officer]** may on reasonable and probable grounds, without a hearing, suspend an exemption for a period of up to **[30 days]** pending Council review of the exemption.

13. Any exemption pursuant to section **[8]** shall be reviewable by Council at any time upon **[advance notice OR ___ days notice]** to the person exempted, and Council is free to revoke, suspend or restrict the exemption with or without cause having regard to the criteria set forth in section **[9]**, without giving notice to adjacent owners in accordance with section **[10]**.

Penalty

14. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

15. Any person who contravenes sections **[insert section numbers of Payment in Lieu of Prosecution Offences]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Repeal

16. **[Chapter [___] of the By-Laws OR By-Law Number [___]] of the [Municipality] entitled [insert name of repealed Noise or Nuisance By-Law] is hereby repealed and replaced by this By-Law.]**

17.

Schedule "A"

Part 1: Activities proscribed at all times:

1. The operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation;

2. The operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to an improperly secured load or equipment or inadequate maintenance;

3. The operation of a motor vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices;

4. The detonation of fireworks or explosive devices not used in construction or quarrying;

5. The discharge of firearms except when used as a signaling device in a sporting competition;

6. The operation of a combustion engine which is used in or intended for use in a toy or a model or replica of any device, which model or replica has no function other than amusement or which is not a conveyance;

7. The operation of a recreational vehicle or boat within **[insert distance]** meters of a dwelling unit without the consent of an adult occupant of the dwelling unit;

8. Persistent barking, howling or other persistent noise-making by a dog or other animal owned or possessed by the occupant of premises;

9. The operation of an engine or motor in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding five minutes unless:

(1) the original equipment manufacturer specifically recommends a longer idling period for normal and efficient operation of the motor vehicle in which case such recommended period shall not be exceeded;

(2) operation of such engine or motor is essential to a basic function of the vehicle or equipment, including but not limited to, operation of ready-mixed concrete trucks, lift platforms and refuse compactors;

(3) weather conditions justify the use of heating or refrigerating systems powered by the motor or engine for the safety and welfare of the operator, passengers or animals, or the preservation of perishable cargo, and where the vehicle is stationary for purposes of delivery or loading;

(4) prevailing low temperatures make longer idling periods necessary immediately after starting the motor or engine;

(5) the idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change of antifreeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.

10. The operation of any item of construction equipment in a residential area without effective muffling devices in good working order and in constant operation;

Part 2: Activities proscribed on a Monday, Tuesday, Wednesday, Thursday, or Friday before 7:00 a.m. or after 9:30 p.m.; on a Saturday before 8:00 a.m. and after 7:00 p.m.; and on a Sunday, Statutory Holiday or Remembrance Day before 9:00 a.m. and after 7:00 p.m.:

1. The operation in the outdoors of any power tool for domestic purposes other than snow removal or gardening;

2. Yelling, shouting, hooting, whistling, singing or playing musical instruments.

3. The loading or unloading of any containers, products, materials or refuse with the exception of private household effects;

4. The use or operation of any commercial vacuuming equipment such as rug cleaning equipment;

5. The operation of any public address system, television set, disc player, tape deck, phonograph, or radio in a manner such that the sound from the equipment being operated is audible beyond the bounds of the property from which the noise is emitted;

6. The operation of any motorized conveyance other than on a street or other place intended for its operation;

7. The operation of snow or ice making equipment;

8. The use or operation of construction equipment, except where such equipment is used or operated on any highways;

9. The operation of a power assisted hang glider, parafoil or hot-air balloon;

10. Construction and the operation of any equipment in connection with construction;

11. The operation of any powered rail car including but not limited to refrigeration cars, locomotives or self-propelled passenger cars, while stationery on property not owned or controlled by a railway governed by the Canada Railway Act.

Part 3: **Activities proscribed on a Monday, Tuesday, Wednesday, Thursday, or Friday before 7:00 a.m. or after 9:30 p.m.; on a Saturday before 8:00 a.m. or after 7:00 p.m.; and on a Sunday, Statutory Holiday or Remembrance Day at all times during any such day:**

1. **[Subject to subsection [(7)] of section [7] of the By-Law,]** the operation of any refrigeration unit which is attached to a refrigeration trailer unless the refrigeration trailer is in motion;

2. The operation of a garborator, solid waste bulk lift, refuse compacting equipment or hydraulic dumpster associated with a commercial enterprise;

3. The operation of a commercial car wash;

4. All selling or advertising by shouting or outcry or amplified sound;

5. The venting, release or pressure relief of air, steam or other gaseous material, product or compound from any autoclave, boiler pressure vessel, pipe, valve, machine, device or system;

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this NOISE BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Noise By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

172 (1) A council may make by-laws, for municipal purposes, respecting

...

(d) nuisances, activities and things that, in the opinion of the council, may be or may cause nuisances, including noise, weeds, burning, odours, fumes and vibrations and, without limiting the generality of the foregoing, by-laws

(i) prescribing a distance beyond which noise shall not be audible,

(ii) distinguishing between one type of noise and another,

(iii) providing that any noise or sound greater than a specific decibel level or other measurement of noise or sound is prohibited,

(iv) prescribing the hours during which certain noises, or all noise above a certain level, specified in the by-law is prohibited,

(v) authorizing the granting of exemptions in such cases as the by-law provides,

(vi) providing that it is an offence to engage in any activity that unreasonably disturbs or tends to disturb the peace and tranquility of a neighbourhood;

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon,

and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- This model By-Law makes it an offence to engage in activities which unreasonably disturb or tend to disturb the peace and tranquility of a neighbourhood or to generate sounds exceeding specified A-weighted decibel levels.

- In section 3 the By-Law creates a generalized offence of creating such a disturbance and, when this general section is used as the basis for prosecution, a presumption is created that disturbance of one neighbour is evidence of disturbing the neighbourhood.

- Because of the difficulty of prosecuting based on generalized provisions regarding disturbing a neighbourhood, it is strongly recommended that specific activities be identified and prohibited when carried out at certain times, as illustrated in Schedule "A" and section 4. The Schedule used for illustration separates activities into ones which are prohibited at all times, or at various different times and each municipal unit will want to select particular activities, which have given rise to complaint as well as the times and days when such activities should be precluded. A variation of the model could be utilized by prohibiting listed activities only in certain areas, such as non-rural areas or areas zoned for residential uses. In that case, a Schedule "B" could be developed with more stringent controls for such areas. It should be noted that the definition of "point of reception" in section 2(4) can be used to apply greater protection for persons or property which contains a dwelling unit, as illustrated in square backets in the model.

- The need for definitions in section 2 varies according to the content of Schedule "A".

- In reviewing possible content for Schedule "A', care should be taken to harmonize the contents with any other applicable by-laws or legislation.

    - For example, s. 8(8) is intended to work with an Off-Highway Vehicles By-Law which allows Council to designate particular areas or sites in the municipal unit as areas in which such vehicles can be operated. Schedule A,

Part 1, section 7 should be deleted if adequate controls are contained within the Off-Highway Vehicles By-Law.

- The provisions in Schedule A that relate to operation of a motor vehicle, overlap somewhat with restrictions in the *Motor Vehicle Act*, sections 187-188, and are of questionable validity to the extent of any conflict.

- Section 5 illustrates another approach to noise control. It prohibits the making of noise which is measurable, off the property where the noise is generated, at particular "A-weighted" decibel levels. A-weighted levels are expressed in dBA. Some publications suggest gun fire or artillery measures 130-140 dBA; power tools or music from a rock band measures between 100-120 dBA; an average conversation is carried out at a level of approximately 50 dBA. It is suggested that only those municipalities with accurate sound measurement devices should utilize a provision such as section 5 and expert evidence may be required when the accuracy of sound measurement is challenged in the course of a prosecution. Municipal units considering the use of a provision such as this should obtain advice on the appropriate dBA levels to select. The dBA levels used for illustration purposes in the model By-Law are significantly higher than those found in a few existing noise by-laws.

- The By-Law contains a list of exemptions of general application for illustrative purposes. Any exemptions in regards religious activities should be made available for all types of religions or denominations to avoid infringing the Canadian Charter of Rights and Freedoms. Council is encouraged to add to or subtract from the list contained in section 6 and 7.

- Sections 8 to 13 authorize Council to grant exemptions from the general application of the By-Law upon application being made.

  - Normally a public hearing is required, although short-term exemptions can be considered without a hearing and concurrently with a Special Events Permit under the Public Places By-Law. The application procedure for exemptions requiring a public hearing involve the applicant giving notice to properties situated within a particular distance of the applicant's property.

  - Exemptions of a permanent character intended to apply to a large area or general population should be dealt with by amendment of the By-Law's fixed exemptions rather than by the application procedure outlined in these sections.

- Council can stipulate conditions when it grants an exemption. Failure to honour the terms and conditions of an exemption is an offence but also may trigger a suspension or revocation of the exemption, which is reviewable by Council.

- The model By-Law provides a mechanism in section 13 for Council to reconsider the wisdom of exemptions it has granted in the past, and complaints for the public may indicate that an exemption is not an appropriate balance between the interests of the exemption holder and those others in the area.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[14]** for general offences and s. **[13]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- The Repeal section is not needed where no existing By-Law regulating noise is in place.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [6]
Off-Highway Vehicles By-Law

Title

1. This By-Law is entitled the "Off-Highway Vehicles By-Law".

Definitions

2. In this By-law:

   (4) "adult" means a person of 19 years of age or more.

   (5) "emergency response personnel" includes personnel of police departments or forces, fire departments or brigades, registered emergency services providers, search and rescue organizations, provincial, regional or municipal Emergency Measures Organizations, ambulance or emergency health services providers and includes volunteer or military personnel responding to an apparent condition of emergency.

   (6) "non-rural areas" means those areas within the **[Municipality] [which are serviced by [Municipal] sanitary sewer as shown on a Map appended hereto entitled "[insert name of map]"] [OR which are subject to a Land Use By-Law and which are zoned to a use other than [for example "Rural General" or "Agricultural"]] [OR which are subject to the [Municipality]'s Urban Service area tax rate].**

   (7) "off-highway vehicle" has the same meaning as in the *Off-Highway Vehicles Act* of the Province of Nova Scotia or successor legislation as may be enacted from time to time.

(8) "registered owner" has the same meaning as in the *Off-Highway Vehicles Act* of the Province of Nova Scotia or successor legislation as may be enacted from time to time.

3. This By-Law is intended to add to, and not to conflict with or subtract from, the requirements contained in valid provincial statutes and regulations in force from time to time concerning the ownership, possession, registration or use of off-highway vehicles and shall be interpreted accordingly.

4. This By-Law does not apply to:

(1) emergency response personnel engaged in the execution of their emergency response duties; or

(2) persons acting at the request of emergency response personnel during an actual or apparent emergency condition.

5. No person shall operate an off-highway vehicle on public or private property except:

(1) on a site designated by resolution of Council, following a public hearing, as an off-highway vehicle site;

(2) in non-rural areas except with the permission of an adult occupant of each dwelling unit located within **[___ meters]**; or

(3) in other areas except with the consent of an adult occupant of each dwelling unit located within **[___ meters]**.

6. No person shall operate an off-highway vehicle in the following sites: **[insert precise description of any prohibited areas, lakes or rivers]**.

7. Any person may make application to Council to have a property, trail, park or area designated as an off-highway vehicles site. Council, by resolution following

a public hearing, may refuse to grant the designation or may grant the designation applied for or any designation of lesser effect. Any designation so granted shall:

(1) identify with particularity the geographic boundaries of the site designated;

(2) specify the time period, the day(s) of the week, and the hours of the day during which the designation shall be effective;

(3) shall be confirmed in writing by the **[CAO OR By-Law Enforcement Officer]** before becoming effective; and

(4) shall include such terms and conditions as Council deems appropriate.

8. In deciding whether or not to grant a designation under section [7] or in determining terms or conditions of the designation, Council shall give consideration to:

(1) the social, recreational or economic benefit of the proposed use for which designation is sought;

(2) the actual or potential competing or alternative uses for the site and their compatibility with the proposed use for which designation is sought;

(3) volume, nature, duration and consistency of noise emission from the proposed use for which designation is sought;

(4) the proximity and nature of abutting or adjacent land uses;

(5) the hours of operation of the proposed use for which designation is sought;

(6) any other factor relevant to balancing the interests of the applicant in the designation against those who might be disturbed in consequence of the designation.

9. At the public hearing pursuant to section [7], Council shall give the applicant and any person interested in the application an opportunity to be heard.

10. **[Advance notice OR ___days notice]** of the time, date and purpose of the public hearing pursuant to section **[6]**, shall be mailed by the applicant to the assessed owner or owners, as shown in the records of the Assessment Office, of each property which contains a building located within **[150 meters]** of the proposed designation site, except that where the exemption is sought for a public park, trail, or when more than **[15]** property owners would be entitled to such a notice, notice may be given by advertisement, of not less than **[25 square cm.]** in size, in a local newspaper of mass circulation.

11. Any contravention of the terms or conditions of a designation pursuant to section **[7]** shall constitute a contravention of this By-Law. In addition to any other available remedies for such contravention, the **[CAO OR By-Law Enforcement Officer]** may on reasonable and probable grounds, without a hearing, suspend a designation for a period of up to **[30 days]** pending Council review of the designation.

12. A designation pursuant to section **[7]** shall be reviewable by Council at any time upon **[advance notice OR ___days notice]** to the property owner or to the applicant who obtained the designation, and Council is free to revoke, suspend or restrict the designation with or without cause having regard to the criteria set forth in section **[8]**, without giving notice to adjacent owners in accordance with section **[10]**.

Penalty

13. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

14. Any person who contravenes sections **[insert section numbers of Payment in Lieu of Prosecution Offences]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this OFF-HIGHWAY VEHICLES BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Off-Highway Vehicles By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

174 Without limiting the generality of Section 172, a council may make by-laws respecting

...

(e) off-road vehicles on public or private property;

...

297 (1) When any fire, rescue or emergency occurs, the fire chief or other officer in charge, and any person under the direction of that officer, shall endeavour to extinguish the fire and prevent it from spreading, conduct the rescue or deal with the emergency and, for that purpose, may

(a) command the assistance of persons present and any inhabitant of the municipality;

...

(c) take charge of property;

...

(f) generally do all things necessary to respond to the emergency.

(2) It is an offence to disobey any lawful order or command of the officer in charge.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- This By-Law is intended to supplement provincial legislation, including the *Off-Highway Vehicles Act* and regulations. That legislation controls registration and use of off-highway vehicles, including use by minors, and prohibits the use of off-highway vehicles on private property, and particular public properties, without the permission of the owner or occupier. This By-Law is intended to place further limits on the use of off-highway vehicles near residential dwellings, and to provide a mechanism for designating sites at which these vehicles can be used.

- The definition of off-highway vehicles in s. 2, incorporates the definition which is in place from time to time under the provincial legislation. At present this includes snowmobiles, three-wheel or four-wheel ATV's, dune-buggies, motorcycles or mini-bikes, four-wheel drive or low tire pressure vehicles, but excludes vehicles registered as a motor vehicle under the *Motor Vehicle Act*.

- The restrictions on the use of off-highway vehicles contained in the By-Law are made inapplicable to emergency response situations in section 4 of the By-Law.

- Sections 5 and 6 are the principal sections restricting the use of off-highway vehicles. Except with the permission of all dwelling units located within a specified distance of the use, persons may only operate such vehicles at sites designated by Council. For illustration purposes, the model by-law provides for different standards in rural and non-rural areas.

- The By-Law provides in sections 7 to12 a public hearing mechanism for designating sites as off-highway vehicle sites. These might include designated trails. A hearing process is suggested in order to ensure that those who might be adversely affected by the designation of a trailer site would have the opportunity to be heard by Council before Council makes its decision. The application procedure requires an applicant to give notice to properties situated within a particular distance of the site.

- When designating the site, Council may impose terms or conditions on the site, such as hours of usage, in order to mitigate the consequences for other users of the site or those living or working in proximity to the site.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[13]** for general offences and s. **[14]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [7]
Pesticides, Herbicides and Insecticides By-Law

46. This By-Law is entitled the "Pesticides, Herbicides and Insecticides By-Law".

47. In this By-Law:

(9) "minor" means any person under the age of 19 years;

(10) "non-rural areas" means those areas within the **[Municipality] [which are serviced by [Municipal] sanitary sewer as shown on a Map appended hereto entitled "[insert name of map]"] [OR which are subject to a Land Use By-Law and which are zoned to a use other than [for example "Rural General" or "Agricultural"]] [OR which are subject to the [Municipality]'s Urban Service area tax rate].**

(11) "pesticide" includes an herbicide or insecticide, and means

(a) any substance that is sold or represented for use in preventing, destroying, repelling, attracting, or mitigating, directly or indirectly, any plant, animal, micro-organism or any organic functions of a plant, animal or micro-organism, including any insect, nematode, rodent, predatory animal, parasite, bacterium, fungus, weed or other form of plant or animal life or virus excluding a virus, parasite bacterium or fungus in a living person or animal;

(b) any substance that is a pest control product within the meaning of the *Pest Control Products Act (Canada)* or is intended for use as a pest control product within the meaning of that *Act*;

(c) any substance that is a plant growth regulator, a defoliant or a plant desiccant;

(d) a fertilizer within the meaning of the *Fertilizers Act (Canada)* that contains a substance referred to in paragraphs (a), (b) or (c); or

(e) any other substance designated as a pesticide, or insecticide in valid Federal or Provincial statutes or regulations as may be enacted from time to time;

but does not include a substance that is intended for sale, sold or represented for use in potable water to prevent or destroy bacteria, parasites or viruses if the substance is not a pest control product within the meaning of the *Pest Control Products Act (Canada)*;

(12) "registered dwelling unit" means a dwelling unit registered in the Pesticide Notification Registry pursuant to section **[6]** of this By-Law;

(13) "treatment site" means the area to which a pesticide is applied.

48. This By-Law is intended to add to, and not to conflict with or subtract from, the requirements contained in valid Federal and Provincial statutes and regulations in force from time to time concerning the possession and use of pesticides and shall be interpreted accordingly.

49. This By-Law does not apply to:

(1) property used for agricultural or forestry purposes;

(2) the application and use of pesticides on a property or portion of a property not used for residential purposes, except for municipal property;

(3) the application and use of pesticides for purposes other than the maintenance of outdoor trees, shrubs, flowers, other ornamental plants and turf;

(4) the use of pesticides within an enclosed building;

(5) **[the lawful use by the occupant of a property of pesticides available without license or qualification to the general public at retail outlets in the [Municipality], provided that**

(a) **the pesticide is applied only to such portion of the property of the occupant as is no closer than [5 metres] to any property line; or**

(b) **the occupant obtains the consent of an adult occupant of the applicable abutting property to apply the pesticide within [5 metres] of that abutting property line, and only to the extent of such consent.]**

(6) the application of:

(a) dormant oil;

(b) lime sulphur; and

(c) insecticidal soap sprays.

50. No person shall spray, spread or otherwise apply to any land, or vegetation growing on the land, or permit another person to spray, spread or otherwise apply to any land, or vegetation growing on the land, a pesticide except in compliance with this By-Law.

51. Any persons having a medical reason for objecting to pesticides being used in the vicinity of their residence and wishing to receive individual advance notification of the application of a pesticide on properties within **[100 metres]** of their dwelling unit in accordance with sections **[7 and 8]** of this By-Law may register their dwelling unit in a Pesticide Notification Registry which shall be maintained by **[e.g. the By-Law Enforcement Officer OR the Manager of Land Information]** by completing and signing a registration form supplied by the

[Municipality] containing their name and civic address, identifying whether their objection is to all pesticides or to specific pesticides, and if which ones, and certifying that an occupant of their dwelling unit has a medical reason for objecting to the use of pesticides, but need not disclose particulars concerning such medical reason. Registration shall remain valid for **[2 years]** from the date of registration, after which it will expire unless renewed, or until the registration is withdrawn by the registrant.

52. Before applying a pesticide, the person or persons applying the pesticide shall review the Pesticide Notification Registry to determine whether any registered dwelling units are located within **[100 metres]** of the property on which the treatment site is situated.

53. When a pesticide is applied on property located within **[100 metres]** of a registered dwelling unit, a warning letter shall be delivered to each such registered dwelling unit or to the mailbox of each dwelling unit in the multiple family dwelling at least **[72 hours]** identifying the treatment site with specificity and containing the same information as required in s. **[7]**, except that lettering shall be in at least **[16 point font and 12 point font]** in place of **[2.5 cm. and 1.5 cm.]** of height respectively. The person applying the pesticide shall make and shall keep for a period of at least **[12 months]** after the pesticide application good and accurate records of the registered dwelling units to whom warning letters were delivered and particulars of the date, time and means of delivery and shall make such records available for inspection by the Municipality upon request.

54. Before applying a pesticide, a warning notice shall be posted and maintained on the property containing the treatment site not later than **[72 hours]** before the application of the pesticide.

55. The warning notice shall be placed in a prominent position so that it is clearly visible and legible from any street abutting the property and shall measure not less than **[20 centimeters by 20 centimeters]** and shall:

(1) contain the following information:

(a) the word "ATTENTION" in bold face, red colour, at least **[2.5 cm.]** in height, and followed by "THIS AREA WILL BE CHEMICALLY TREATED AT (INSERT TIME) ON (INSERT DATE)" or words of same effect;

(b) The common trade name, pest control product number, if any, and concentration of the pesticide used;

(c) the name and telephone number of the person applying the pesticide;

(d) the words "AVOID CONTACT WITH TREATED AREAS" in bold face, red color at least **[2.5 cm.]** in height; and

(e) the words "If you require emergency medical information, the Poison Control Center telephone number is (insert the current telephone number for the Poison Control Center at the IWK Hospital for Children in Halifax)"; and

(2) be constructed in the following manner

(a) rectangular in shape; and

(b) designed such that the lettering is at least **[1.5 cm.]** in height, except to the extent otherwise specified in this section, and in contrasting colour to the background;

except that if a notice is required to be posted under valid Provincial or Federal legislation, compliance with the contents and format of the notice required under such legislation shall be deemed to constitute sufficient compliance within this section.

56. Any person spraying, spreading or otherwise applying or permitting another to spray, spread or otherwise apply a pesticide in the **[Municipality]** shall ensure

that the warning notice required by this By-Law remains posted for a period of not less than **[72 hours]** after the completion of application of the pesticide, and that the warning notice is removed within a further period of **[72 hours].**

57. In non-rural areas of the **[Municipality]**, in instances when a street frontage of the property to which a pesticide is applied exceeds **[30 metres]**, the warning notice required herein shall be replicated and erected and maintained at intervals not exceeding **[25 metres]** along each street frontage of the said property, and in other areas of the **[Municipality]** warning notices shall be at intervals not exceeding **[50 metres]** along each street frontage of the property.

58. No person shall remove a warning notice posted pursuant to this By-Law, except after the expiry of **[72 hours]** from the time of application of the pesticide.

59. No person shall apply a pesticide within **[20 metres]** of any minor without first:

(1) warning an adult person, where the minor is accompanied by an adult; or

(2) warning the minor and taking reasonable measures to ensure that the minor is removed from within **[20 metres]** of the treatment site, where the minor is not accompanied by an adult.

60. Any person who contravenes any provision of this By-Law is guilty of an offence punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading_____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this PESTICIDES, HERBICIDES AND INSECTICIDES BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Pesticides, Herbicides and Insecticides By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

172 (1) A council may make by-laws, for municipal purposes, respecting

...

(j) regulation of the application and use of pesticides, herbicides and insecticides for the maintenance of outdoor trees, shrubs, flowers, other ornamental plants and turf on the part of a property used for residential purposes and on property of the municipality and, without restricting the generality of the foregoing, the by-law may

(i) require the posting of notices when pesticides, herbicides or insecticides are to be so used and regulate the form, manner and time of the notice and the area in which the notice must be posted,

(ii) establish a registration scheme, that is open to the public, in which a resident who has a medical reason for objecting to pesticides, herbicides and insecticides being so used may file with the clerk an objection to them being so used in the vicinity of the property on which the person resides,

(iii) require that notices be served on the residents of properties registered pursuant to the registration scheme within the distance specified in the by-law when pesticides, herbicides or insecticides are to be so used and regulate the form, time and manner of the notice, and

(iv) specify the circumstances in which the posting or serving of notices is not required,

but a by-law may not prohibit the use of pesticides, herbicides and insecticides and a by-law pursuant to this clause does not apply to property used for agricultural or forestry purposes;

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Municipal units are urged to obtain technical advice on the properties of pesticides, herbicides and insecticides and input from businesses involved in the application of such products before adopting a by-law of this nature. The reader is cautioned that the drafters of this model by-law did not have the benefit of such advice or consultation in preparing this draft.

Comment

- This By-Law is intended to supplement Federal regulations under the *Pest Control Products Act* and the Pesticide Regulations under the *Environment Act* of Nova Scotia. Those regulations require commercial pesticide businesses to post a warning sign at the time of application and for a period of 24 hours after application of commercial class or restricted class pesticides, with provision for a waiver to be granted by the Department of Environment. The model By-Law allows for more stringent signage requirements, extends those requirements in some instances to applications carried out by residents as well as commercial enterprises and creates a Pesticide Notification Registry whereby personal notification will be given to registrants in advance of pesticide use near their property.

- The definition of pesticide, herbicide and insecticide in Section 2(4) of the model By-Law is adapted from the definition of pesticide in the Provincial pesticide regulations, which is inclusive of herbicides and insecticides.

- Section 3 of the model By-Law is intended to maximize the prospects of having the Court uphold additional municipal enhancements to Federal or Provincial warning or other requirements in respect of pesticide application. In the event of

any direct conflict between Provincial environmental regulations and a municipal by-law, the by-law provision may be held invalid.

- Section 4 outlines circumstances in which the By-Law does not apply. The first four subsections of this paragraph conform with limitations contained within the enabling section of the *Municipal Government Act*. Subsection (5) is an optional provision intended to allow householders to apply over-the-counter (unrestricted) pesticides to their own property without having to post signage or check the Pesticide Notification Registry except when the pesticide is applied within 5 meters (or such other distance as may be selected by Council) of an abutting residential property. The 5 meter buffer can be avoided by obtaining the consent of the abutting property owner or by carrying out the warning notification provisions outlined later in the By-Law. Council may not wish to exempt the use of over-the-counter pesticides from the reach of the By-Law, and the subparagraph can, in that case, be deleted entirely.

- Subsection (6) of Section 3 excludes certain products from the application of the By-Law. The selected products are included for illustration purposes only and without the benefit of expert or industry advice and it is strongly suggested that the municipal unit should obtain advice regarding products which can be applied without any actual or perceived safety concern.

- The enabling legislation does not authorize the By-Law to prohibit the use of pesticides in any location in order to give effect to the objection. Accordingly, while the model By-Law provides a registration scheme in sections 6-8, registration only ensures that posting of signs at the treatment site is supplemented by delivery of a notice to the registrant's home in advance of pesticide application. Some municipalities may elect to adopt a registration system or a sign-posting system, instead of requiring both.

- Sections 9-11 of the model By-Law require notices to be posted 72 hours before the application of a pesticide and for the notices to remain posted until 72 hours after the pesticide application. Other notice periods, distances and lettering size on signage may be selected by Council if it wishes.

- Section 12 illustrates a possible differentiation between rural and urban areas in regards the frequency interval along the street at which notices must be posted.

- Section 14 requires particular steps to avoid applying pesticide when a minor is within a stipulated distance of the treatment site.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[15]** for general offences. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [8]
Public Places By-Law

Title

15. This By-Law is entitled the "Public Places By-Law".

16. Nothing in this By-Law shall be construed as authorizing non-compliance with any other laws, regulations, by-laws, lawful orders or directives pursuant to any statute, regulation or statutory or regulatory authority respecting the use of particular public places or particular types of public places.

Definitions

17. In this By-Law:

    (1) "abutter" means the owner, lessee or occupier of any premises which abut a sidewalk;

    (2) "aggressive or persistent begging" means any begging except passive begging as defined in this By-Law.

    (3) "begging" means soliciting or requesting a donation and includes providing a service without being expressly requested to do so in the expectation or hope of obtaining a donation or payment for that service;

    (4) "crosswalk" means that portion of a roadway ordinarily included within the prolongation or connection of curb lines or the edge of a roadway and property lines at intersections or any portion of a roadway clearly indicated for pedestrian crossings by lines or other markings on the road surface;

(5) "loiter" means to stand idly around or move slowly about or to linger or spend time idly or to impede the passage of other persons;

(6) "mobile canteen" means a vehicle used for the display, storage, transportation or sale of food or beverages by a mobile vendor;

(7) "mobile vendor" means a person who vends from a mobile canteen or a stand;

(8) "obscene language" includes but is not restricted to the words set out or described in Schedule "A" **[insert Schedule "A" listing prohibited obscene language]**;

(9) "passive begging" means begging

(a) in a non-threatening manner;

(b) by an individual, not in the company of other persons;

(c) when the begging individual is standing, sitting or lying in a stationary position, without physical approach towards or touching a person from whom a donation is sought;

(d) when the individual begging does not make more than one request or solicitation for a donation from any person;

(e) in a place in which the begging individual can be circumnavigated by a pedestrian, without having to step into a roadway, with a clearance of not less than 1 meter from the begging individual; and

(f) if the begging individual is playing a musical instrument or otherwise performing a service, and a container is placed on the ground, not passed for donations.

(10) "public places" means

(a) streets,

(b) public parks and trails,

(c) property owned by the **[Municipality]**,

(d) recreation facilities funded or partially funded by the **[Municipality]**, and

(e) places designated by Council resolution as a public place for purposes of this By-Law provided that such place is posted as a designated public place in accordance with this By-Law;

(11) "roadway" means that portion of a street between the curb lines or the traveled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;

(12) "rural areas" means those areas within the **[Municipality] [which are not serviced by [municipal] sanitary sewer as shown on a map appended hereto as Schedule "B"] [OR which are not subject to a land use by-law or which are zoned to a [for example "rural general" or "agricultural"] use] [OR which are not subject to the [Municipality's] urban service area tax rate]**;

(13) "sidewalk" means that portion of a street between the curb line and the adjacent property line or any part of a street especially set aside for pedestrian travel and separated from the roadway;

(14) "street" means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith and, without restricting the generality of the foregoing, includes the full right-of-way width and includes streets not owned by the **[Municipality]**;

(15) "vending" means the sale, or offering for sale, of

(a) food, beverages or other merchandise unless they are immediately delivered to a residence or shop by the person selling them; or

(b) services, unless they are provided in a building; and

includes vending by a mobile vendor.

Designation of Public Places

18. Upon application made by the owner of any property in the **[Municipality]**, Council may designate a property or portion of a property as a Public Place for purposes of this By-Law if the property or portion of a property is in, on or near a place that is open to the public.

19. The owner of a property or portion of a property designated by Council as a Public Place under section **[4]** shall keep posted at a prominent location thereon a sign bearing the words "This property has been designated a Public Place by the **[Municipality]** for purposes of the Public Places By-Law" in letters at least 2.5 cm. in height in a contrasting color to the background of the sign, and containing such other information concerning this By-Law as the **[Clerk]** may authorize.

20. At the request of the owner, Council shall revoke the designation of a property or portion of a property designated as a public place pursuant to section **[4]**.

21. Council may, on its own initiative and in its own discretion, revoke a designation made pursuant to section **[4]**.

Interfering with Use and Enjoyment

22. No person shall unreasonably interfere with the lawful use and enjoyment of a public place by other persons.

23. Without limiting the generality of section **[8]**:

(1) no person shall use obscene language in a public place;

(2) no person shall expectorate in a public place;

(3) no person shall light or have a fire in a public place;

(4) no person shall camp or tent in a public place;

(5) no person shall sleep in a public place after dark;

(6) no person shall engage in aggressive or persistent begging in a public place;

(7) no person shall engage in passive begging in any of the following public places:

(a) at a place designated as a Public Place at the request of the owner pursuant to section **[4]**;

(b) in a roadway or crosswalk; or

(c) in the places identified in Schedule "C" of this By-Law **[insert Schedule "C" containing detailed listings of specific sidewalks or other places in which passive begging will not be permitted]**.

(8) no person shall skateboard, rollerblade, scooter or roller-skate in a public place except such places as may be posted by or on behalf of the **[Municipality]** or the owner as an authorized place in which to carry out such activity;

(9) no person shall bicycle in a public place except

(a) on a roadway in accordance with other applicable laws;

(b) in areas or upon trails posted by or on behalf of the **[Municipality]** or the owner as an authorized place in which to bicycle;

(10) no person shall bring into or possess in a public place any animal except:

(a) dogs kept under control by means of a harness or leash or otherwise complying with provisions in the **[Municipality's]** Dog By-Law;

(b) cats or other domestic pets kept under control by means of a harness or leash or carried in a cage;

(c) horses in trails or parks posted by or on behalf of the **[Municipality]** or the owner as an authorized place in which to ride horses, provided however, that the horse is under the continuous physical restraint and control of a rider or handler;

(d) horses being used for law enforcement purposes by or under the direction of a peace officer;

(e) horses in rural areas on a street, provided however, that the horse is under the continuous physical restraint and control of a rider or handler;

(f) animals being transported in a vehicle; and

(g) other animals pursuant to a Special Events Permit;

(11) no person shall litter or deposit or leave waste in a public place except in a designated waste receptacle;

(12) no person shall use motorized vehicles or apparatuses in a public place except:

(a) wheelchairs or scooters for disabled persons;

(b) motorized vehicles or apparatuses otherwise lawfully in use on a roadway, driveway or parking lot; or

(c) off-highway vehicles lawfully in use in accordance with the *Off-Highway Vehicles Act* **[and the Off-Highway Vehicles By-Law]**;

(13) except in accordance with **[a Street Disturbance Permit issued under the Municipal Streets and Sidewalks By-Law or]** a Special Events Permit, no person shall obstruct the use by others of public places, including but not restricted to, causing or permitting an impediment to the traffic of pedestrians, infant strollers and wheelchairs on sidewalks, crosswalks or paths, and causing an impediment to vehicular traffic in roadways;

(14) no person shall carry on public entertainment events, exhibitions, parades or circuses except as expressly authorized by or pursuant to a Special Events Permit;

(15) no person shall deface, damage or destroy municipal property in a public place, and, in addition to any penalty upon a prosecution for contravention of this provision, the **[Municipality]** may recover the expense incurred in remediating the damage, together with costs and pre-judgment interest, by action in any court of competent jurisdiction.

(16) no person shall loiter

(a) in a public place posted by or on behalf of the **[Municipality]** or the owner as a "No Loitering" area; or

(b) in the public places listed in Schedule "D" to this By-Law **[insert Schedule "D" with prohibited loitering places identified]**; and

(17) no person shall engage in vending in a public place except as expressly authorized by the Vending By-Law.

Signs and Posters

24. Subject to the other provisions in this By-Law, persons may carry with them signs, posters and banners in a public place.

25. Except at a recreational facility to the extent expressly authorized by the manager of a recreational facility, or except as authorized in this By-Law or in the Municipal Streets and Sidewalks By-Law:

(1) no person shall post, nail, place or attach any sign, poster, notice or advertisement to any tree, telegraph, telephone, hydroelectric, cable telecommunication or other utility pole in a public place; and

(2) no person shall post, nail, place or leave in a public place any sign, poster, handbill, notice or advertisement except on public poster boards which may be found at the following locations: **[insert locations of public poster boards]**.

26. At or on such public poster boards, no person shall post, nail, place or attach any sign, poster, notice or advertisement except for posters erected in compliance with the following requirements:

(1) the maximum size of any poster shall be **[28 cm. x 43 cm.]**;

(2) a poster advertising or giving notice of an event shall not be erected more than **[3 weeks]** before that event;

(3) the person erecting a poster shall, at the time of erecting it, inscribe upon it the date and the name, address and telephone number of the person erecting it;

(4) the person erecting a poster shall remove the poster within **[3 weeks]** of placing it there and dispose of it without littering;

(5) posters shall be erected by means of thumbtacks and not less than 4 such tacks shall be used to affix it to the poster board;

(6) posters on the poster board shall not be removed or covered by a person erecting another poster on the poster board, except that posters may be removed in the event they are overdue for removal pursuant to subsection (3).

Special Events

27. A person wishing to carry out a public entertainment event, exhibition, parade or circus in a public place or any other activity of a temporary nature which might interfere with the lawful use and enjoyment of a public place by other persons may apply for a Special Events Permit.

28. Application for a Special Events Permit shall be made

(1) to the Council, when a Special Events Permit has not been granted to the applicant or a predecessor organization by Council within the previous **[5 years]** for an event of substantially the same nature;

(2) to the **[Clerk or CAO]**, when a Special Events Permit has been granted to the applicant or a predecessor organization by Council within the previous **[5 years]** for an event of substantially the same nature.

29. Upon receipt of an application under section **[14(2)]**, the **[Clerk or CAO]** may

(1) subject to subsection **[(2)]**, issue a Special Events Permit on the same terms and conditions and for the same fee, if any, as Council set on the most recent occasion of its granting of such a Permit for such organization; or

(2) refer the application to Council:

(a) when the applicant requests a variation in the terms and conditions and fee, if any, previously set by Council;

(b) **[when a Noise By-Law exemption is concurrently sought;]** or

(c) when the **[Clerk or CAO]**, in his or her discretion, otherwise deems it appropriate.

30. Upon hearing an application, Council may by resolution refuse to grant the Permit, or may grant the Permit applied for or any Permit of lesser effect. Any Permit so granted shall:

(5) specify the time period, the public places and the activities for which the Permit shall be effective;

(6) **[specify whether a Noise By-Law exemption is being concurrently granted by Council and, if so, identify any related terms or conditions]**

(7) be confirmed in writing by the **[Clerk OR CAO]** before becoming effective;

(8) include such terms and conditions as Council deems appropriate;

(9) be subject to the provision of an indemnity in favour of, and in form satisfactory to, the **[Municipality]** for the defence and indemnification of any claims arising out of or in relation to the proposed event and related activities; and

(10) be subject to the payment of the Special Event fee, if any, set by Council pursuant to section **[18]**.

31. In deciding whether or not to grant a Permit under section **[16]** or in determining terms or conditions of the Permit, Council shall give consideration to:

    (1) the social or economic benefit of the proposed event to the municipality;

    (2) the volume, nature, duration and consistency of disturbance to the use and enjoyment of public places from the proposed event;

    (3) the proximity and nature of abutting or adjacent land uses and the effect upon them of granting the Permit;

    (4) **[whether the proposed event would also require the granting of an exemption from the Noise By-Law, and, if so, whether it is appropriate to grant such an exemption having regard to the requirements in that By-Law;]** and

    (5) any other factor relevant to balancing the interests of the applicant, the **[Municipality]** and others in relation to the proposed event.

32. When granting a Special Events Permit, Council may set a fee of:

    (1) when the event is carried on for profit or gain by or for an entity not registered with Revenue Canada as a charitable organization:

        (a) **[insert amount]** for each day of event activities for which a Permit is required; or

        (b) **[insert amount]** per person per day expected to attend the event;

    plus

    (2) an amount estimated as required to defray any extraordinary, police, fire or clean-up expenses of the **[Municipality]** associated with or arising from the event.

33. Notwithstanding sections **[13 to 18]** of this By-Law, when an event for which a Special Events Permit is required would result in an obstruction of a street, the approval of the Traffic Authority is required prior to issuance of a Special Events Permit.

Penalties

34. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

35. Any person who contravenes sections **[insert section numbers of Offences governed by Payment in Lieu of Prosecution Policy]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount]** within **[14 days]** of the date of the notice and shall thereby avoid prosecution for that contravention.

Effective Date

36. The effective date of this By-Law is **[insert date, which must be no earlier than the projected date of advertisement of the passage of the By-Law]**.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this PUBLIC PLACES BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Public Places By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

172 (1) A council may make by-laws, for municipal purposes, respecting

(a) the health, well being, safety and protection of persons;

(b) the safety and protection of property;

(c) persons, activities and things in, on or near a public place or place that is open to the public;

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Restrictions on the usage of public places entail numerous constitutional issues. While some of these have been identified in the comments below, it is important to obtain advice from the municipal solicitor on the constitutional validity of the model By-Law before adopting or varying it.

Comment

- This By-Law regulates the use of public places within the municipal unit with a view to ensuring they are available for conventional uses without undue interference from unwanted activity. It is not restricted to regulating public places owned by the municipal unit: more detailed provisions relating to streets and sidewalks owned by the municipal unit can be found in the model **[Municipal]** Streets and Sidewalks By-Law.

- The model By-Law is primarily concerned to maximize the use and enjoyment of public places by the community. Because of the subject matter, the By-Law interacts with other by-laws of the municipal unit, including:

    - **[Municipal]** Streets and Sidewalks By-Law;
    - Vending By-Law;
    - Dog By-Law;
    - Noise By-Law;
    - Off-Highway Vehicles By-Law;
    - Land Use by-laws.

- In the By-Law, "public places" is defined in section 3(10) to include all streets and sidewalks, public parks and trails, property owned by the municipal unit itself, recreation facilities funded or partially funded by the municipal unit, and places designated by Council at the request of the land owner. The latter provision allows private enterprises who wish to have the additional enforcement provided by the Public Places By-Law to assist in regulating conduct on their property. Designation at the request of the owner is dealt with in sections 4-7 of the model By-Law. If Council is not inclined to take on the additional enforcement burdens, these sections, section 9(3)(a) and section 3(10)(e) should be deleted. If the designation provisions are left in the model By-Law, Council will still have the opportunity to decide on a case by case basis whether it wishes to include any particular property within the scope of the By-Law's coverage.

- The principle provision in the By-Law is the prohibition on unreasonably interfering with the lawful use and enjoyment of a public place by other persons. This is set out in a general manner in section 8.

- Because of the difficulty of enforcing this sort of generalized prohibition, it is important to list with greater specificity the conduct which will be prohibited in a public place. Section 9 is the section containing the detailed list of prohibitions.

    - Subsection (1) prohibits the use of obscene language. Because of the prospect that a court may find the phrase "obscene language" to be too vague to enforce, the By-Law, through its definition of that phrase, suggests inclusion of a specific listing of obscene words or descriptions of obscene words in Schedule "A" to the By-Law. While this may be a distasteful task, it is probably a necessary one if the prohibition is going to be effectively enforced.

- Subsections (2) to (5) prohibit or restrict spitting, lighting fires, camping and sleeping after dark in a public place.

- Subsections (6) and (7) limit panhandling and unsolicited services in public places. In the model By-Law "passive begging" is prohibited in certain specified public places, including public places designated at the request of the owner and it is suggested that a schedule be attached as Schedule "C" to identify specific public places in which even passive begging will not be permitted. Because of the prospect of constitutional challenges in the event that there is not a genuine opportunity to carry out such activity in a meaningful way in the municipal unit, it is important that Schedule "C" not be overly inclusive so as to effectively prohibit all panhandling. The definition of "passive begging" in section 3(9) is designed to avoid intimidation of passers-by by panhandlers. "Begging" is also a defined term and it includes providing a service in the hope of obtaining a payment, such as the services of so-called "squeegee kids". Under the By-Law, passive begging is not permitted in a roadway. The provisions in the model By-Law have not been constitutionally tested.

- Provisions in subsections (8) - (12) regulate various other types of activity in public places ranging from skateboarding, bicycling, animals, use of motorized vehicles and littering. The *Motor Vehicle Act* in s. 306 limits municipal by-law making authority in regards regulating the use of highways and provisions of the Act deal with:

- vehicles in parks (s. 166)
- bicycles (s. 171 and s. 171A)
- skateboards and roller-skates (s. 172)
- horses (s. 167)

The Municipal solicitor should ensure that any regulation of these subjects in this By-Law complies with the limitation on authority contained in s. 306.

- Subsections (13) - (14) require a Special Events Permit, discussed below, for carrying on a public event that obstructs the use of roads, sidewalks, paths, etc.

- Subsection (15) prohibits defacing, damaging or destroying municipal property and confirms that a penalty for breaching the By-Law does not preclude the right to sue for damages.

- Subsection (16) prohibits loitering in defined places. Because of constitutional strictures, it is suggested that loitering not be generally proscribed. There may, in any event, remain an issue as to whether any restriction on loitering is constitutionally permissible, recognizing that loitering by-laws may be viewed as an improper means of allowing police to exercise arbitrary or discriminatory control over people.

- Subsection (17) of section 9 confirms that vending or, (if the municipal by-law on vending is restricted to vending on streets) vending on streets is prohibited except as authorized under the Vending By-Law.

- Sections 10 - 12 of the model By-Law regulate signage and postering in public places. Because of constitutional rights of free expression, section 10 confirms that it is permitted to carry picket signs and banners in a public place, subject to the other restrictions in the By-Law such as the prohibition on obstructing the use of sidewalks and roads. From a constitutional perspective, the critical ingredient in banning postering or signage on power poles, trees or other structures in a public place, is the provision of a reasonable number of public poster boards as an outlet for those wishing to express themselves in this manner. This will likely entail considerable expense. The use of public poster boards is regulated in section 12 of the model By-Law.

- Sections 13 - 18 of the model By-Law concern themselves with issuance of Special Events Permits for public entertainment events, exhibitions, parades, circuses or other activity of a temporary nature which would interfere with the public's undisturbed use and enjoyment of a public place. The model By-Law has been drafted such that for any particular type of event, Council would be the body to whom applications are made, as the issues involved in granting such a permit involve weighing a number of competing policy issues. Issues for Council's consideration are listed in section 17: essentially Council can issue a permit where it believes the balance of the various interests of affected parties favour doing so.

- If Council has previously issued a permit for the same type of event to the same organization or a predecessor organization, the model By-Law provides that the Clerk or CAO may issue a Special Events Permit without having to go back to Council. This should not occur, however, if a Noise By-Law exemption is also being sought, as the *M.G.A* provides that only Council has the authority to grant exemptions from the Noise By-Law.

- Council can concurrently hear applications for a Special Events Permit and a Noise By-Law exemption, but it will be important to comply with any procedural requirements in the Noise By-Law prior to the hearing.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[20]** for general offences and s. **[21]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [9]
[Municipal] Streets and Sidewalks By-Law

Title

1. This By-Law is entitled the "**[Municipal]** Streets and Sidewalks By-Law".

2. This By-Law applies only to streets, sidewalks and other property owned by the **[Municipality]** and to activities or conditions affecting such **[Municipal]** streets, sidewalks and property.

Definitions

3. In this By-Law:

   (1) "abutter" means the owner, lessee or occupier of any premises or lot in the **[Municipality]** which abuts a **[Municipal]** street, and where the premises or lot has been registered as a condominium under the *Condominium Property Act*, includes the condominium corporation which manages the premises or lot;

   (2) "crosswalk" means that portion of a **[Municipal]** roadway ordinarily included within the prolongation or connection of curb lines or the edge of a roadway and property lines at intersections or any portion of a roadway clearly indicated for pedestrian crossings by lines or other markings on the road surface;

   (3) "Engineer" means the **[Municipal]** Engineer and includes a person acting under the supervision and direction of the Engineer;

   (4) "**[municipal]** infrastructure" includes infrastructure that supports the provision of **[municipal]** services as well as water services, and without restricting the

generality of the foregoing includes public trees, street lighting, traffic lights, traffic signs and other **[municipal]** signs;

(5) "**[Municipal]** sewer or water system" means a sewer or water system owned and operated by the **[Municipality]** or by a water utility owned by the **[Municipality];**

(6) "roadway" means that portion of a **[Municipal]** street between the curb lines or the traveled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;

(7) "sidewalk" means that portion of a **[Municipal]** street between the curb line and adjacent property line or any part of the street especially set aside for pedestrian travel and separated from the roadway;

(8) "street" means a **[Municipal]** street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith and, without restricting the generality of the foregoing, includes the full right-of-way width;

(9) "utility" includes any person or corporation that provides water, electric power, telecommunications service, natural gas or other gas intended for use as fuel to the public, except a water utility owned by the **[Municipality]**;

(10) "utility facilities" includes any pole, pole lines (including braces and anchors), aerial cables, manholes, conduits, underground cables, pipes for the carriage of gas or liquids, and associated apparatus for the provision of utility services, including amplifiers, connection panels, transformers, valves and other fittings or equipment.

Removal of Ice and Snow from Sidewalks

4. Except in the areas identified in Schedule "A" of this By-Law **[insert Schedule "A" identifying the areas in which there is Municipal sidewalk plowing]**, in which **[municipal]** snow removal services is provided, abutters shall remove all snow and ice:

   (1) from any sidewalk which abuts any side of their property;

   (2) from any pathway leading from a sidewalk abutting their property to the roadway; and

   (3) between any sidewalk abutting their property and a crosswalk.

5. The removal of snow and ice required by the immediately preceding section of this By-Law shall be such as to leave an area entirely cleared of snow and ice of not lesser width than either:

   (1) 1 meter; or

   (2) the full width of the sidewalk.

6. Subject to section **[7]**, the removal of snow required pursuant to section **[4]** following a snowfall shall be completed:

   (1) when a snowfall ceases during daylight hours and at least **[4 hours]** in advance of sunset, **[within 4 hours]** after the snow stops falling;

   (2) at other times, **[within 4 hours]** after sunrise on the following day.

7. Irrespective of whether a sidewalk is one listed in Schedule "A" or is otherwise plowed periodically by the **[Municipality]**, when a sidewalk is slippery in the winter due to the presence of compressed snow or ice, the abutter shall apply sufficient sand, salt or gravel to provide good traction for pedestrian traffic:

   (1) on any sidewalk which abuts any side of their property;

(2) on any pathway leading from the sidewalk abutting their property to the roadway; and

(3) between any sidewalk abutting their property and a crosswalk.

8. Abutters whose property has snow, icicles or ice overhanging or abutting a sidewalk, including snow or ice on a roof which might slide onto a sidewalk, shall remove such snow, icicles or ice before they fall or are likely to fall onto a sidewalk at an uncontrolled time or in an uncontrolled manner.

9. When an abutter fails to remove snow, ice or icicles from sidewalks or structures as required by this By-Law, the Engineer may give to the abutter an order to remove the snow and ice **[within 24 hours of OR forthwith]** upon service of such notice.

10. If the remedial work ordered pursuant to section **[9]** is not made within the time provided for by the order, the Engineer may make or cause to be made such snow, ice or icicle removals.

11. The **[Municipality]** may recover the expense incurred in making snow, ice or icicle removals pursuant to section **[10]**, together with costs and pre-judgment interest by action in any court of competent jurisdiction, or may charge and collect same as a first lien on the property.

12. Nothing in this By-Law creates a duty upon the **[Municipality]** to inspect or become aware of hazardous conditions created by snow or ice on or near or overhanging sidewalks. Council hereby declares, having regard to the resources and fiscal priorities of the **[Municipality]**, that it is the express policy of the **[Municipality]**:

(1) only to carry out inspections upon receiving a complaint about such conditions in respect of a specific location; and

(2) such complaints shall be deemed to be remedied upon the removal or remediation of the hazardous condition that existed at the time of the making of the complaint.

Vegetation in Street Right-of-Way

13. Abutters shall maintain any grass between the curb and a sidewalk abutting their property and between the curb and their abutting property except in areas designated by Council resolution as exempt from this requirement including:

(1) clipping, cutting or mowing the grass to a height of not greater than **[8 cm.]**;

(2) raking and renewing grass as necessary in order to maintain a neat and tidy appearance; and

(3) collecting and removing litter or waste.

Encroaching Vegetation

14. Abutters shall trim the branches of trees, hedges, bushes or other shrubbery which encroaches from the abutting property over a street so as to prevent such tree, hedge, bush or other shrubbery:

(1) from interfering with pedestrian traffic on a sidewalk;

(2) from interfering with or affecting the sight lines of any person on a bicycle or in a motor vehicle traveling on the roadway up to a minimum height of **[2.25 meters]**; or

(3) from interfering with any structure on or in a street.

Nuisance

15. No abutter shall place, permit to be placed, or permit to escape from the abutter's property or driveway, dirt, dust, or other nuisance onto the street.

Damage

16. No person shall

    (1) move any heavy load over or deposit any heavy load on any sidewalk unless the sidewalk has first been protected by a covering of boards of adequate thickness to prevent any visible damage or disturbance to the surface of the sidewalk, or

    (2) otherwise cause or permit any visible damage or disturbance to the surface of a sidewalk

    except as authorized by a Street Disturbance Permit.

17. No person shall

    (1) drag or cause or permit any load or part of a load to drag on any roadway in such a manner as to cause any visible damage or disturbance to the surface of the roadway, or

    (2) otherwise cause or permit any visible damage or disturbance to the surface of a sidewalk

    except as authorized by a Street Disturbance Permit.

18. No person shall drive over a curb with a heavy load or otherwise cause any visible damage or disturbance to the surface of the curb, except as authorized by a Street Disturbance Permit.

Gates

19. No person shall construct or permit to be used any gate or barriers that open into or encroach upon any portion of the street or that may in any way impede pedestrian or vehicular traffic.

Sidewalk Signage

20. Subject to the restrictions contained in **[the Land Use By-Law]**, sandwich boards or temporary or mobile signs may be placed on a sidewalk by an abutter lawfully operating a commercial enterprise or by a vendor authorized to carry on vending pursuant to the Vending By-Law, provided that the owner has obtained a Sidewalk Signage Permit and provided that such signage:

    (1) shall not be placed or left on the sidewalk when the associated commercial enterprise is not open to the public;

    (2) shall not be placed or left on the sidewalk when there is snow or ice on the sidewalk;

    (3) shall not be placed or left on the sidewalk so as to obstruct the traffic of pedestrians, or wheelchairs, and without limiting the generality of the foregoing, shall only be placed in a manner that leaves a minimum width of **[1 meter]** of sidewalk unobstructed between the curb and the signage or between the signage and the nearest building or other obstruction to the interior of the sidewalk; and

    (4) shall contain a maximum signage face area of **[1 square meter]**.

21. A Sidewalk Signage Permit shall be obtained from the **[Development Officer]** upon

(1) payment of a permit fee of **[insert amount];**

(2) submission of an application in writing, in duplicate, on such form as may be specified by the **[Development Officer]** from time to time, and signed by the person applying therefore;

(3) the provision of an indemnity in favour of, and in form satisfactory to, the **[Municipality]** for the defence and indemnification of any claims arising out of or in relation to the signage.

Awnings and Signs Encroaching on Airspace

22. No person shall cause or permit a sign, awning or other structure to encroach upon the air space above a street or sidewalk or other municipally owned property except pursuant to an Airspace Encroachment Permit.

23. Application for an Airspace Encroachment Permit shall be made to the **[Development Officer]** and the **[Development Officer]** may issue such permit upon

(1) payment of a permit fee of **[insert amount];**

(2) submission of an application in writing, in duplicate, on such form as may be specified by the **[Development Officer]** from time to time, and signed by the person applying therefore;

(3) determination by the **[Development Officer]** that the encroachment is for a proposed sign or awning which complies with the Land Use By-Law;

(4) determination by the **[Building Inspector]** that the proposed sign or awning complies with the *Building Code Act* and *Regulations* and the **[Building By-Law]**;

(5) determination by the **[Traffic Authority]** that the proposed sign or awning is not a traffic hazard, having regard to sight lines or otherwise and, in any event,

the proposed sign or awning must have a minimum clearance above the sidewalk of **[3 meters]** and must not project beyond the sidewalk into the air space above the roadway;

(6) provision of an indemnity in favour of, and in form satisfactory to, the **[Municipality]** for the defence and indemnification of any claims arising out of or in relation to the sign or awning; and

(7) provision of an acknowledgement that the permission of the **[Municipality]** to encroach may be withdrawn without payment of any compensation.

Other Encroachments

24. When any part of a street or other **[municipal]** property has been built upon, other than pursuant to an Airspace Encroachment Permit, the encroachment may be authorized to continue upon obtaining an Encroachment Permit.

25. Application for an Encroachment Permit shall be made to the Engineer and the Engineer may issue such permit upon

(1) determination by the Engineer that the encroachment was made in error;

(2) payment of a permit fee of **[insert amount]**;

(3) submission of an application in writing, in duplicate, on such form as may be specified by the Engineer from time to time, and signed by the person applying therefore;

(4) determination by the Engineer that the encroachment does not significantly impede pedestrian or wheelchair traffic on a sidewalk or vehicular traffic on a roadway;

(5) determination by the **[Traffic Authority]** that the encroachment does not pose a traffic hazard having regard to sight lines or otherwise;

(6) provision of an indemnity in favour of, and in form satisfactory to, the **[Municipality]** for the defence and indemnification of any claims arising out of or in relation to the encroaching structure; and

(7) provision of an acknowledgement that the permission of the **[Municipality]** to encroach may be withdrawn without payment of any compensation.

26. Notwithstanding the issuance of an Encroachment Permit, no person shall permit or cause a further or renewed encroachment once the original encroaching structure is demolished, destroyed or removed to the extent of 75% or more.

27. Notwithstanding sections **[24 to 26]**, Council may by Agreement, authorize an encroachment or the continuation of an encroachment upon, under or over a street for such period of time and upon such conditions as it deems appropriate.

28. Sections **[24 to 27]** do not apply to utility facilities.

Provisions Applicable to Various Permits

29. Sections **[28 to 34]** apply to Sidewalk Signage Permits, Airspace Encroachment Permits and Encroachment Permits.

30. Such Permits shall remain in effect for a period of **[3 years]** from the date of issuance, and applications for a renewal shall be made at least **[one month]** before the renewal date, on such form as may be specified by the **[Development Officer]** or Engineer, as the case may be, from time to time, accompanied by the permit fee.

31. In the event of a change in ownership of the business for which the Permit has been issued, the new owner shall notify the **[Development Officer]** or Engineer, as the

case may be, in writing of his name and postal address and no fee shall be payable for substituting the new owner's name and address for that of the former owner.

32. The **[Development Officer]** or Engineer, as the case may be, may refuse to issue or renew, or may revoke or suspend a Permit for breach of this By-Law or for not meeting or for ceasing to meet the terms of eligibility for the Permit, upon **[10 days]** notice to an applicant or Permit holder from the date of mailing the notice to the address of record of the Applicant or Permit holder.

33. A person aggrieved by a decision pursuant to section **[31]** of the **[Development Officer]** or Engineer, as the case may be, may appeal that decision to **[Council]** within **[15 days]** from the date of mailing of the decision to the owner's address of record, by written notice of appeal to the Clerk.

34. After the hearing of an appeal, **[Council]** may confirm, rescind or vary the decision of the **[Development Officer]** or Engineer, as the case may be.

35. Notwithstanding the issuance of a Permit, if Council is at any time of the opinion that terminating an encroachment would serve the **[Municipality's]** interests, it may, by resolution, terminate any permission or authority to encroach provided that:

    (1) 60 days notice shall be provided to the affected Permit Holder except in the event of imminent danger or harm in which event no notice is required; and

    (2) the affected Permit Holder shall be given a rebate of the Permit fee, pro-rated to reflect the proportion of unexpired time for which the Permit would otherwise have remained in effect.

Sidewalk Cafes and Restaurants

36. Council may enter into leases, containing such terms and conditions as it deems appropriate, for the seasonal or temporary use of a sidewalk or other suitable

[municipal] property as a sidewalk café or restaurant. Nothing in this section limits any other authority of Council **[or the Chief Administrative Officer]** to make leases of other **[municipal]** property.

Controlled Access Streets

37. The streets or portions of streets identified in Schedule "B" to this By-Law are hereby designated as "controlled access" streets.

Street Disturbance Permit

38. No person shall:

(1) make any excavation in a street;

(2) cause or permit the breaking of the surface of a street or other physical damage to a street by construction activities in or near a street; or

(3) otherwise engage in construction activity or other temporary activity that is likely to obstruct pedestrian or vehicular traffic in a street

without first obtaining a Street Disturbance Permit from the Engineer.

39. Every application for a Street Disturbance Permit shall include

(1) a non-refundable fee of **[$10.00]** when the Permit is required solely because of an obstruction of one month or less to the pedestrian or vehicular traffic in a street, without breaking or damaging the surface or subsurface of a street or to **[Municipal]** infrastructure or property in, on or under a street;

(2) a non-refundable fee in the amount of **[$100.00]** in all other cases; and

(3) where an excavation or other construction activity is involved that may, in the opinion of the Engineer, cause damage to a street, a security deposit in the amount of **[$1,000.00]**.

40. The security deposit required under **[subsection (3) of section 39]** shall be retained as security that the applicant will properly perform and complete the work for which the permit is granted, and restore and keep the surface of the street and other **[Municipal]** property when such work is done, to a good condition to the satisfaction of the Engineer for a period of six months after the completion of the work.

41. If the Engineer is of the opinion that the surface of the street or other **[Municipal]** property is not restored and kept in good condition for the six month period, he may, upon advance notice to the Permit holder, perform such work in respect of the street as he considers necessary and the cost shall be deducted from the deposit, and the balance, if any, returned upon the expiry of the six month period. If the cost of such work exceeds the deposit, the **[Municipality]** may recover the balance, together with costs and pre-judgment interest, by action in any court of competent jurisdiction from the Permit holder, or may charge and collect the balance, together with costs and pre-judgment interest as a first lien on the property for whose benefit the work was undertaken.

42. The Engineer may grant an Annual Street Disturbance Permit to a utility for the purpose of the installation of Utility facilities, including pavement patching related thereto which require excavations in municipal streets, subject to such conditions as the Engineer may determine, and, without restricting the generality of the foregoing, any such permit shall require that the Engineer be informed of the location and time of each instance of street disturbance prior to its commencement.

43. An application for an Annual Street Disturbance Permit shall include

(1) a non-refundable fee of **[$500.00]**; and

(2) a security deposit in the amount of **[$10,000.00]** to be maintained in place for the duration of the permit.

44. The provisions of sections **[40 and 41]** shall apply, with any necessary changes for context, to the annual security deposit pursuant to **[subsection (2) of section 43]** and the balance of the security deposit shall be returnable upon expiration of the permit.

45. Every Permit holder shall file in the office of the Engineer a notice of completion of work for all facilities constructed or repaired within a street within one week of the completion of the work.

46. Every excavation in a street shall, after notice, either written or verbal, given by Engineer to the Permit holder, be closed and filled as required by the notice, and if it is not so closed and filled within 48 hours after such notice, then it may be closed and filled by the **[Municipality]** at the expense of the Permit holder.

47. In the event of an emergency arising at the location of the excavation, the Engineer may immediately fill or direct the filling of the excavation at the expense of the Permit holder.

48. Every person obtaining a Street Disturbance Permit to make any excavation or opening in any street shall

(1) sufficiently and continuously light the excavation at night;

(2) enclose and secure the excavation by a fence or barrier at least one meter in height; and

(3) comply with any standards relating to excavations in the *Occupational Health & Safety Act* or *Regulations* or any other applicable statutes or regulations.

49. In addition to any other conditions imposed by the Engineer for the granting of a Street Disturbance Permit, all permits shall be subject to the following conditions:

(1) the Engineer may stipulate the hours of work;

(2) the Permit holder shall keep the work site at all times safe with respect to vehicular and pedestrian traffic, including direction of traffic, barricades, lights, signs, and supply of properly equipped and trained traffic control personnel for protection of traffic, in accordance with the Temporary Workplace Control Manual or other standards in force pursuant to the *Occupational Health and Safety Act*;

(3) the Engineer may order additional precautions, work stoppages and restorations of the street should circumstances warrant and upon the failure of the Permit Holder to comply within 24 hours with such order, or immediately in the event of an emergency, the **[Municipality]** may undertake any necessary action at the expense of the Permit holder.

(4) the Permit holder shall ensure that the street is kept free from nuisance, dirt, and dust;

(5) the Permit holder shall dispose, store, or haul away any clean material suitable for use as structural fill excavated from a street in accordance with the directions of the Engineer and the material may, at the **[Engineer's]** discretion, remain **[Municipal]** property;

(6) the Permit holder shall ensure that all excavations are backfilled and restored in such manner and with such material as is approved by the Engineer and that advance notice of a minimum of 24 hours of the backfilling operation shall be provided to the Engineer so that it may be properly inspected;

(7) the Permit holder shall comply and ensure compliance by any agents, contractors or employees, with

(d) the **[Municipality's Policy on Driveway Access and Construction Standards]** in cases where the construction activity involves construction, repair or alteration of driveway access points into a street;

(e) the **[Municipality's Policy on Utility Facilities Construction]** in cases where the construction activity involves construction, repair or alteration of Utility facilities;

(f) the **[Municipality's Policy on Street and Sidewalk Construction Standards]** where the construction activity involves excavation or other penetration or damage to the surface or subsurface of a street;

(g) and any other Policies or Standards of the **[Municipality]**, from time to time, regarding design or construction standards applicable to **[municipal]** infrastructure or property in, on, under or near a street;

(8) the provision of an indemnity in favour of, and in form satisfactory to, the **[Municipality]** for the defence and indemnification of any claims arising out of or in relation to the proposed street disturbance activities;

(9) the permit shall be valid for a period of **[6 months]** from date of issuance, but where work has commenced the permit shall expire **[12 months]** after the date of issuance; and

(10) any other condition in respect of safety or preservation of **[Municipal]** property interests that the Engineer may impose.

50. In the event of an emergency requiring the immediate excavation of the street, the Engineer may give verbal permission for such excavation on the condition that a

Street Disturbance Permit is applied for and obtained on the first working day subsequent to the granting of such permission.

51. The Engineer may refuse to issue, renew or amend, or may revoke or suspend a Street Disturbance Permit, upon reasonable notice to an applicant or Permit holder, when

    (1) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has adequately protected or will adequately protect the **[Municipality's]** property;

    (2) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has minimized or will minimize the obstruction to pedestrian or vehicular traffic in the street;

    (3) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has achieved or will achieve compliance with any applicable Policies or Standards of the **[Municipality]**;

    (4) this By-Law or the terms or conditions of a Permit have been contravened; or

    (5) for any other reason in the public interest.

52. A person aggrieved by a decision of the Engineer pursuant to section **[51]** may appeal that decision to **[Council]** within **[15 days]** of the decision by written notice of appeal to the Clerk.

53. After the hearing of an appeal, **[Council]** may confirm, rescind or vary the decision of the Engineer.

Penalty

54. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

55. Any person who contravenes sections **[insert section numbers of Payment in Lieu of Prosecution Offences]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this [MUNICIPAL] STREETS AND SIDEWALKS BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

[Municipal] Streets and Sidewalks By-Law Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

309 (1) The council may make by-laws for the protection of streets and may limit the by-law to certain streets, or to certain times of the year, or to both.

...

(4) The council may, by by-law

(a) establish a pedestrian mall on a street or any other land owned by the municipality;

(b) prohibit any person from using any vehicle or apparatus on a sidewalk in the municipality;

(c) prohibit any person from taking or riding any animal on any sidewalk in the municipality;

(d) designate any street as a controlled access street.

...

310 (1) The council may, by by-law

(a) require the owner, occupier or person in charge of a property to clear snow and ice from the sidewalks adjoining the property;

(b) prescribe measures to be taken by the owners, occupiers or persons in charge for the abatement of dangerous conditions arising from the presence of snow and ice on the sidewalks adjoining the property.

(2) Where a person required by a by-law made pursuant to subsection (1) fails to clear the ice and snow from the sidewalk forthwith after notice to do so

or to take the necessary measures for the abatement of any dangerous condition arising from the presence of the snow and ice, the engineer may have the snow and ice cleared and any necessary measures to abate dangerous conditions taken.

(3) The council may, by by-law

(a) require the owner of a property to remove ice or icicles from part of a building overhanging or abutting a sidewalk;

(b) require the owner of lands abutting a street to maintain an area of vegetation between the streetline and the main traveled way.

...

314 (1) Where any part of a street, other than the travelled way, has been built upon and it is determined that the encroachment was made in error, the engineer may permit, in accordance with any by-law made pursuant to subsection (2), the encroachment to continue until such time as the building or structure encroaching upon the street is taken down or destroyed.

(2) A council may, by by-law, regulate encroachments upon, under or over streets, including stipulating the period of time an encroachment may remain and the entering into of agreements, including terms and conditions, for particular encroachments

...

317 (1) No person shall break the surface of a street without the permission of the engineer.

(2) A council may, by policy, prescribe the terms upon which a permit to break the surface of a street may be granted, including setting a fee for the permit and requiring security to be posted to ensure that the street is restored.

(3) No person shall construct or widen a driveway, or other access to a street, without the permission of the engineer.

318 (1) No person shall

...

(b) erect, construct or place a building or structure, fence, railing, wall, tree or hedge or part of them upon a street;

...

321 (1) The engineer may require an owner or occupant of land adjoining a street to remove or trim a tree, bush, shrub, hedge or other vegetation that, in the opinion of the engineer, is a source of danger to traffic on the street.

(2) Where the owner of the land fails to remove or trim the vegetation within fourteen days after receipt of notice from the engineer, the engineer may cause the vegetation to be removed or trimmed.

322 The engineer may

(a) permit a person to use a portion of a street for construction or other temporary purpose;

(b) temporarily close a street, or part thereof, for the protection of the public, to allow work to be done on the street or on lands and buildings adjacent to the street or for any other purpose beneficial to the public interest.

...

172 (1) A council may make by-laws, for municipal purposes, respecting

...

(k) services provided by, or on behalf of, the municipality;

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon,

and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- This model By-Law applies only to municipally owned streets (and matters affecting those streets). The model Public Places By-Law is the primary source of regulation of the use of municipal streets as well as other streets and public places from the perspective of protecting their use and enjoyment from unwanted activities.

- Sections 4-12 of the By-Law impose obligations on abutting property owners to clear snow and ice from the sidewalk and snow, ice or icicles from overhanging eaves where they pose a hazard to sidewalk users:

    - Each municipal unit will want to consider what standard of timeliness to require in regards clearing of snow after a snowstorm: the draft timelines in section 6 may be changed.

    - Section 12 represents an attempt to avoid liability based on a duty to inspect sidewalks. If the policy as stated in section 12 is not in fact the policy of the municipal unit, the provision should be amended or deleted accordingly.

    - The sections on snow and ice removal allow the municipal unit to remediate conditions after the abutting owner fails to respond to a notice to do so.

- Sections 13-14 require abutting owners to maintain strips of lawn that may be located between the sidewalk and the curb or between a curb and the abutting property and to trim vegetation which overhangs a street.

- Sections 15-18 prohibit damaging the surface of sidewalks, roadways or curbs and placing dirt, dust or other substances on the street.

- Sections 20-21 regulate the use of sandwich boards or other temporary signage which may be placed on the surface of a sidewalk by a commercial enterprise. The regulatory scheme requires a Sidewalk Signage Permit to be obtained from the Development Officer.

- Sections 22-23 regulate encroachments caused by overhead signs and awnings above sidewalks. These are regulated by obtaining a permit from the Development Officer referred to in this instance as an Airspace Encroachment Permit.

- Sections 24-28 regulate encroaching structures which were accidentally built into the surface of the street right-of-way. Under section 314 of the *MGA*, these encroachments may be regulated by the Engineer. The model By-Law accordingly permits an Engineer to issue an Encroachment Permit. Alternatively, it permits Council to authorize encroachments by Agreement.

- Sections 29-35 provide a consistent framework for the handling of applications for Sidewalk Signage Permits, Airspace Encroachment Permits and Encroachment Permits, providing for an appeal to Council and also protecting Council's right to revoke any permission granted for an encroachment.

- Section 36 suggests that seasonal sidewalk cafes and restaurants will be dealt with by lease.

- Section 37 provides a mechanism for defining municipal controlled access streets by attachment of a schedule.

- Sections 38-53 provide a detailed mechanism, through issuance of a Street Disturbance Permit both for temporary obstructions to facilitate construction and for breaking the surface of the street for construction activities. In the latter case, section 317 of the *M.G.A.* permits the terms for breaking the surface of the street to be set by Policy. They can alternatively be created by By-Law and, for convenience, sample provisions have been included in the model By-Law.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[54]** for general offences and s. **[55]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [10]
Boarding Houses and Rooming Houses By-Law

Title

37. This By-Law is entitled the "Boarding Houses and Rooming Houses By-Law".

Definitions

38. In this By-Law:

(5) "boarded up building" means a rooming house for which the Rooming House License has been withdrawn by written authorization by the Building Inspector and which is boarded up so as to restrict entrance in a manner acceptable to the Building Inspector;

(6) "Building Inspector" includes the **[Municipal]** Building Inspector, the Deputy Building Inspector and any other person appointed by Council as a Building Inspector or Acting Building Inspector;

(7) "buildings under construction" means a partially completed rooming house for which a valid building permit is still in force and for which an occupancy permit has not been granted;

(8) "habitable room" means a room designed for or which may be used for living, sleeping, eating or cooking;

(9)

(10) "non-habitable room" means an area of a rooming house other than a habitable room, and includes the following:

(a) a bathroom or shower room;

(b) a toilet room;

(c) a laundry room;

(d) a boiler room;

(e) a furnace room;

(f) a pantry;

(g) a closet;

(h) a corridor;

(i) a foyer;

(j) a stairway;

(k) a lobby;

(l) a recreation room; or

(m) other space for service or maintenance of the rooming house or access to and vertical travel between storeys.

(11) "occupier" or "occupant" includes the roomer or boarder in a rooming house, the person entitled to possession of a rooming house unit, a leaseholder, and a person having or enjoying for any way or purpose, the use of a rooming house otherwise than as owner;

(12) "owner" has the meaning specified in the enabling legislation;

(13) "roomer" includes a boarder and is a person residing as tenant in a rooming house;

(14) "rooming house" includes a boarding house and means a building in which rooms or suites of rooms are rented for sleeping purposes to [3] or more separate tenants, and in which the principal kitchen facilities or the principal bathroom or toilet facilities are for use in common by separate tenants, but excludes:

(a) a university, a college, an institution of learning, a public hospital, mental hospital, tuberculosis hospital, maternity hospital or sanatorium, a municipal home or a jail, prison or reformatory;

(b) a maternity home that is licensed under the *Childrens Services Act;*

(c) a nursing home to which the *Homes for Special Care Act* applies;

(d) a hotel that is licensed under the *Hotel Regulations Act*;

(e) a residential care facility that is licensed under the *Homes for Special Care Act*;

(f) a building under construction; or

(g) a boarded up building.

(15) "rooming house unit" means the room or suite of rooms occupied or intended to be occupied by a separate tenant; and

(16) "separate tenant" means each occupier or group of occupiers with a separate landlord and tenant relationship regarding part of a rooming house;

General Duties & Obligations

39. The owner of a rooming house shall maintain the rooming house

(1) to the standards stipulated in this By-Law, except those standards required exclusively of occupants, and

(2) in compliance with the terms and conditions of its Rooming House License

and failure to meet each and every such standard, term or condition shall constitute a separate and distinct offence.

40. In addition to the requirements of section **[3]**, the owner of a rooming house built subsequent to the coming into force of this By-Law shall maintain the rooming house to the standard to which it was required to be built.

41. All repairs to a rooming house shall be made in a manner accepted as good workmanship in the trade concerned and with materials suitable and sufficient for the purpose.

42. The standards of this By-Law are minimum standards and this By-Law shall not be construed so as to lessen the requirements prescribed for buildings, constructions, repairs and alterations contained or adopted by the **[Municipality pursuant to its Building By-Law and the *Building Code Act*]** and all repairs or alterations made to any rooming house shall be performed in compliance with the standards contained or adopted by the **[Municipality Building By-Law and the *Building Code Act*]**.

43. The occupant of a rooming house shall maintain that portion of the rooming house under his or her exclusive possession to the standards provided in this By-Law for an occupant, and failure to meet each and every such standard shall constitute a separate and distinct offence.

Rooming House Licenses

44. Effective upon **[insert future date]**, the owner of each rooming house in the **[Municipality]** shall obtain and maintain a valid Rooming House License for the rooming house at all times, and no person shall own or operate a rooming house without a License thereafter.

45. Applications for a Rooming House License effective upon **[insert same date as in previous section]** shall be made at least **[e.g. 6 months]** in advance of such date, and applications for Licenses effective on a later date shall be made at least **[e.g. 2 months]** in advance of the anticipated date of commencement of rooming house operations.

46. All Rooming House Licenses shall be obtained by application to the office of the Building Inspector. The application for a Rooming House License, or an amendment to a Rooming House License, shall be made in writing, in duplicate, on such form as may be specified by the Building Inspector from time to time, and signed by the person applying therefore. Every application for a Rooming House License shall contain the following information:

    (1) the name, postal address and phone number of the owner and operator of the rooming house;

    (2) the civic address of the rooming house;

    (3) a plan diagram of the floor layout of each storey of the rooming house, identifying the proposed use and dimensions of each habitable and non-habitable room;

    (4) the maximum number of roomers for which the Rooming House License is sought;

    (5) a license fee of **[insert amount or amount per roomer]**;

47. The Building Inspector may issue a Rooming House License containing terms and conditions consistent with this By-Law.

48. In the event of a change in ownership of a rooming house, the new owner shall notify the Building Inspector in writing of his name and postal address and no fee shall be payable for substituting the new owner's name and address for that of the former owner.

49. A Rooming House License shall remain in effect for a period of **[2 years]** from the date of issuance, and applications for a renewal or an amendment shall be made at least **[e.g. 2 months]** before the renewal date, on such form as may be specified by the Building Inspector from time to time, accompanied by the license fee.

50. The Building Inspector may refuse to issue, renew or amend, or may revoke or suspend a Rooming House License for breach of this By-Law or of the terms or conditions of a License upon **[10 days]** notice to an applicant or License holder, from the date of mailing to the owner's address of record.

51. A person aggrieved by a decision of the Building Inspector pursuant to section **[14]** may appeal that decision to **[Council]** within **[15 days]** of the posting of the decision at the rooming house and its mailing to the applicant or owner at the address of record, by written notice of appeal to the Clerk.

52. After the hearing of an appeal, **[Council]** may confirm, rescind or vary the decision of the Building Inspector.

53. The owner of a rooming house, instead of acquiring a rooming house license, may obtain a permit to board up the rooming house.

54. A permit to board up a rooming house may be granted by the Building Inspector where the building is vacant at the time of application.

55. The permit to board up a rooming house may contain whatever conditions a Building Inspector deems necessary for safety.

56. No permit to board up under this Section shall be valid for more than one (1) year from the date of issue.

57. Upon the expiration of the one (1) year referred to in the previous subsection, no permit to board up shall be issued for the same building without the consent of Council.

Inspections and Orders of the Building Inspector

58. The Building Inspector may enter into a licensed rooming house, a property for which a Rooming House License or License Renewal is sought, or a property believed by him or alleged by any person to be carrying on business as a rooming house contrary to this By-Law, to inspect it at any time.

59. When a person has notified the Building Inspector of a violation of this By-Law, the Building Inspector may send or provide to that person a copy of an inspection report.

60. In addition to any other remedies contained in this By-Law, the Building Inspector may order:

    (1) the owner to do whatever repairs are necessary to bring the rooming house to the standards contained in this By-Law, except those standards required exclusively of occupants, and to comply with terms or conditions in the applicable Rooming House License;

    (2) the occupant to do whatever repairs are necessary to bring the portion of the rooming house under his exclusive possession to the standards provided in this By-Law for an occupant.

61. When the Building Inspector makes an order pursuant to section **[24]**, the order shall be in a written form, directed to the owner or occupant, as the case may be and mailed to the owner. Such an order may be made concurrently with a notice pursuant to section **[14]** of this By-Law.

62. If the repairs ordered pursuant to section **[24]** are not made within the time provided for by the order of the Building Inspector, the **[Municipality]** may make, or cause to be made those repairs at the expense of the owner or occupant as the case may be, provided however that where it is apparent that the actual cash value of disturbance, damage or loss from the remediation together with the cost of the remediation itself is likely to exceed **[insert amount]**, the approval in advance of **[the CAO OR Clerk]** shall be obtained except in the event of actual or apparent imminent harm to a human person or animal, or in the event of actual or apparent imminent damage to property of other parties in excess of **[insert amount]**.

63. The **[Municipality]** may recover the expense incurred in making such repairs with costs and prejudgment interest by action in any court of competent jurisdiction, or in the case of orders made under subsection **[(1)]** of section **[24]**, may charge and collect such expense and costs, together with prejudgment interest, as a first lien on the property.

Rubbish

64. The owner shall keep all parts of the rooming house, except those within the exclusive possession of an occupant, clean and free from:

    (1) rubbish, garbage and other debris;

    (2) objects and conditions, holes and excavations, that are health, fire or accident hazards.

Garbage Disposal

65. Every rooming house shall be provided with solid waste containers and receptacles which comply with the **[Solid Waste By-Law]** requirements.

66. Such containers and receptacles shall not be located in a habitable room and shall be adequate to enclose **[one week's]** solid waste of the number of people occupying the rooming house.

Roofs

67. The roof of a rooming house shall be kept weathertight and free from leaks.

68. Every eavestrough, roof gutter and downpipe of a rooming house shall be kept:

    (1) in good repair,

    (2) in good working order,

    (3) watertight and free from leaks,

    (4) free from health and accident hazards.

69. Every roof of a rooming house shall be kept free from:

    (1) loose or unsecured objects and materials,

    (2) dangerous accumulations of snow and ice,

    (3) all other fire and accident hazards.

Exterior Walls

70. The components of every exterior wall of a rooming house and the exterior wall itself shall be maintained:

    (1) in good repair,

    (2) weathertight,

    (3) free from loose or unsecured objects and materials,

    (4) to prevent the entrance of insects and rodents,

    (5) to prevent deterioration due to weather, insects, or animals.

71. Without restricting the generality of section **[34]**, the maintenance of such exterior wall includes the waterproofing of the wall and joints, restoring, repairing and replacing of:

    (1) the wall,

    (2) the bricks and mortar,

    (3) the stucco, lathing and plaster,

    (4) the cladding,

    (5) the coping,

    (6) the flashing.

Foundation Walls and Foundation Supports

72. Every foundation wall forming part of a rooming house shall be maintained in good repair so as to prevent settlement of the building or the entrance of moisture, insects or rodents.

73. Without limiting the generality of section **[36]**, the maintenance of such a foundation wall includes:

(1) jacking up, underpinning or shoring the walls where necessary,

(2) replacing subsoil drains at the footing,

(3) grouting masonry cracks,

(4) waterproofing the walls and joints.

74. All foundation supports forming part of a rooming house shall be maintained in good repair so as to prevent settlement of the building.

75. Without limiting the generality of section **[38]**, the maintenance of such foundation supports includes:

(1) repairing or replacing decayed, damaged or weakened sills, piers, posts or other supports,

(2) making sills, piers, posts or other supports waterproof, weatherproof and insect proof by the application of paint or other suitable materials,

(3) using suitable means to jack up or support the building where necessary.

Structural Soundness

76. Every part of a rooming house shall be maintained in a structurally sound condition and so as to be capable of sustaining safely its own weight and any load to which it may normally be subjected.

Drainage

77. Every basement, cellar, crawl space and similar space in a rooming house shall be adequately ventilated to the outside air and adequately drained.

78. Every floor, every ceiling, both sides of every interior wall and the interior side of every exterior wall in a rooming house shall be maintained free from dampness.

79. Section **[42]** does not apply to:

    (1) any non-habitable room in a basement or cellar, or

    (2) a garage.

80. Every rooming house shall be so constructed and protected as to prevent the passage of noxious gases from a part of the rooming house that is not used, designed or intended to be used for human habitation into other parts of the rooming house intended, used or designed for human habitation.

Exterior Doors and Windows

81. All exterior windows, doors and hatchways in a rooming house shall be maintained in good repairs and weathertight.

82. Without restricting the generality of section **[45]**, the maintenance required for such apertures includes:

    (1) repairing or renewing damaged, decaying or rotten:

        (a) doors,

        (b) door frames and casings,

        (c) window sashes, and

        (d) window frames and casing.

    (2) refitting doors and windows,

    (3) weather stripping,

    (4) repairing or replacing defective or missing door hardware and defective or missing window hardware,

    (5) reglazing, and

(6) using other suitable means of weatherproofing.

83. Every opening in an exterior wall of a rooming house that

(1) is used or required for ventilation or illumination,

(2) is not protected by a window or door, and

(3) could permit the entry of rodents, or vermin,

shall be screened with wire mesh, metal grille, or other durable material, or otherwise protected so as to effectively prevent the entry of rodents, or vermin.

84. Where storm windows are installed in a rooming house, such windows shall be maintained in good repair and glazed.

85. All shutters on a rooming house shall be maintained in good repair.

86. Without restricting the generality of Section **[49]**, the maintenance of such shutters includes:

(1) repairing or replacing damaged or decayed shutters and hardware, and

(2) using other suitable means to prevent deterioration due to weather and insects.

Egress

87. The owner shall maintain a safe, continuous and unobstructed passage from the exterior of each rooming house unit in each building to the exterior of each building at street or grade level.

88. The passage required in section **[51]** shall not pass through a room in another rooming house unit.

Stairs, Balconies and Porches

89. Every stairway, balcony or porch in, on or appurtenant to a rooming house shall be maintained:

    (1) in good repair,

    (2) free from

        (a) holes

        (b) cracks

        (c) excessive wear and warping, and

        (d) other defects that are accident hazards.

90. Without restricting the generality of section **[53]**, the maintenance of such stairs, balconies and porches includes:

    (1) repairing or replacing treads, risers or floors that show excessive wear or are broken, warped or loose,

    (2) repairing, renewing or supporting structural members that are rotted, deteriorated or loose,

    (3) painting.

91. Every open side of a stairway or flat roof of a rooming house to which access may be gained through a doorway, terrace, balcony, porch, landing or stairwell shall have a rigid guardrail not less than 85 cm. high with an intermediate rail, or a balustrade in good repair firmly attached so as to provide reasonable protection against accident or injury, where

    (1) the vertical rise between the base of the stairway and the top of the stairway exceeds 1.25 meters, or

    (2) the flat roof, terrace, verandah, porch landing or stairwell -

(a) is more than 60 cm. above the ground, floor or other horizontal place below, and

(b) can be used by any person who is in, on or at the building.

92. Every stairway of a rooming house that does not require a guardrail or balustrade under section **[55]** shall have a rigid handrail not less than 85 cm. high in good repair on at least one side of the stairway firmly attached so as to provide reasonable support for persons using the stairway.

Walls and Ceilings

93. Every wall and ceiling in a rooming house shall be maintained in good condition and free from holes, cracks, and loose plaster.

94. Every ceiling, both sides of an interior wall and the interior side of an exterior wall in a rooming house shall be lathed and plastered or covered with gyproc or other material having equivalent qualities.

95. Section **[58]** shall not apply to:

(1) a garage,

(2) any non-habitable room, except a bathroom, shower room or toilet room, whose floor is below the finished grade of the adjoining yard, or

(3) any attic space that is not used, designed or intended to be used for human habitation.

Floors

96. All floors in a rooming house shall be maintained free from

(1) loose, warped, protruding, broken or rotted boards,

(2) holes or cracks.

97. Where a floor in a rooming house is covered with linoleum or a similar covering that has become torn or holed so that it retains dirt or is an accident hazard, the covering shall be repaired, replaced or removed.

98. Every bathroom floor, shower room floor and toilet room floor in a rooming house shall be maintained in a manner that permits easy cleaning.

99. Without restricting the generality of section **[62]**, the maintenance of such floors includes installing, repairing, refinishing and replacing a floor or floor covering that will provide the required conditions.

Fireplaces, Fuel-burning Equipment, Chimneys, etc.

100. Every fireplace used, capable of being used or intended to be used in a rooming house for burning fuel in an open fire shall be maintained in good repair and so as to prevent the heating of adjacent combustible material or structural members to unsafe temperatures and shall be effectively vented to the outside air by means of a chimney.

101. In every rooming house:

(1) equipment that burns fuel,

(2) heating equipment, and

(3) every vent pipe, chimney, smoke pipe, flue or duct, connected to such equipment,

shall be so constructed, placed, protected and maintained in good repair as to prevent unsafe or dangerous conditions and the entrance of noxious gases into the rooming house units or common areas.

102. Equipment that burns fuel in a rooming house shall be effectively vented to the outside air by means of a chimney, a flue, a smoke pipe, a vent pipe or a similar duct.

103. Without restricting the generality of sections **[64]** and **[65]**, the maintenance of such fireplaces, chimneys, etc. includes

(1) lining, repairing and relining the fireplace with fire resistant material,

(2) installing, repairing and replacing the hearth of the fireplace,

(3) clearing obstructions from the chimney, flue, smoke pipe or other duct,

(4) sealing open joints and repairing masonry,

(5) using piping or ducts of adequate size for a chimney, flue, smoke pipe, vent pipe or a similar duct.

104. Section **[66]** does not apply to a domestic appliance used for cooking if the appliance is

(1) so constructed, designed and used as not to require venting, and

(2) not used or intended to be used for heating purposes.

Heating System

105. Every rooming house shall be provided with a heating system capable of maintaining a room temperature of not less than 20 degrees Centigrade in all parts of all habitable rooms, bathrooms and toilet rooms, in a rooming house at all times.

106. Such heating system shall be maintained in good repair and working condition and capable of heating the rooming house safely.

107. Where in a rooming house

(1) a heating system or part of it or

(2) an auxiliary heating system or part of it

burns or is designed or intended to burn solid or liquid fuel, a place or receptacle for the storage of such fuel shall be provided and maintained in good condition in the rooming house building and properly constructed so as to be free from fire or accident hazards.

108. All fuel-burning appliances, equipment, accessories and installations in a rooming house shall be installed in a good and workmanlike manner and maintained in good repair and working order.

109. Where there is fuel burning equipment in any rooming house, an adequate supply of fuel shall be available at all times for such equipment.

Heating Equipment Connections

110. All connections between heating equipment or cooking equipment that burns or is designed or intended to burn liquid or gaseous fuel in a rooming house and the source of liquid or gaseous fuel shall be maintained rigid and in good repair.

111. Notwithstanding section **[74]**, an approved flexible connector may be used to connect a gas stove used only for cooking purposes to its source of gaseous fuel.

Plumbing and Plumbing Fixtures

112. All plumbing in a rooming house, including plumbing fixtures, drains, water pipes, toilet and connecting lines to the water and sewer systems, shall be installed and maintained in good working order and repair and free from leaks and other defects.

113. A toilet or a urinal in a rooming house shall be located only within a separate bathroom or toilet room.

114. A wash basin that is in good working order, served with hot and cold running water and connected to the drainage system for the rooming house shall be located in every room that contains a toilet or a urinal, except that when a rooming house contains not more than three (3) rooming house units, the wash basin may be located in a room adjoining the room that contains a toilet or a urinal.

115. Every bathroom and toilet room in a rooming house shall

(1) be located within the main portion of the building

(2) have provisions for privacy,

(3) where the bathroom or toilet room is used or is intended to be used by the occupants of more than one (1) rooming house unit, have an entrance from the common passageway, hallway, corridor or other space used in common by the occupants of the rooming house, and

(4) where the bathroom or toilet room is used or intended to be used by the occupants of more than three (3) rooming house units, be located and available to each occupant of a multiple occupancy rooming house on

(a) the same storey as, or

(b) the next story up or down from

the storey on which the room or rooming house units occupied by the occupant is located.

116. No person shall store or prepare food in a room in a rooming house that contains a toilet or a urinal.

117. An adequate supply of potable water shall be available at all times to all plumbing fixtures located in a rooming house.

Security

118. Every rooming house unit shall have at the entrance to the rooming house unit a door that closes securely and that is fitted with proper hardware in good repair and working condition.

Kitchens

119. Every room in a rooming house in which meals are prepared shall have a sink that

(1) has a splashback and a drainboard made of non- porous material that is easily cleaned,

(2) is served with hot and cold running water,

(3) is connected to the drainage system for the building,

(4) is in good repair and working order.

120. Where more than two (2) persons occupy a rooming house unit, no person shall store, prepare or cook food in a room in the rooming house unit used for sleeping purposes.

121. Every kitchen in a rooming house shall be provided with a properly installed and maintained source of electricity.

Electrical System

122. Every rooming house shall be connected to an electrical supply system and shall be wired for electricity.

123. Subject to section **[107]** an adequate supply of electrical power shall be available at all times in all parts of every occupied rooming house.

124. The capacity of the connection to the rooming house and the system of circuits distributing the electrical supply within the rooming house shall be adequate for the use and intended use in the rooming house.

125. Subject to section **[91]**, every habitable room in a rooming house shall have at least two (2) duplex receptacles.

126. A kitchen electric utility receptacle in a rooming house shall:

    (1) be mounted in a separate outlet box,

    (2) be connected to a utility circuit used exclusively for the utility of Number 12 gauge wire, and

    (3) be protected by no larger than a 15 ampere fuse or circuit breaker.

127. Every laundry room in a rooming house shall have at least one electrical duplex convenience outlet in good working order.

128. An electrical light fixture shall be permanently installed and maintained in good working order in every toilet, toilet room, bathroom, shower room, kitchen, kitchenette, cooking space, laundry room, furnace room, hall and stairway in a rooming house.

129. No person shall place an extension cord directly beneath a floor covering or through a doorway, transom, wall, ceiling or floor in a rooming house and no person shall use, cause or permit the use of an extension cord so placed.

130. The electrical wiring, circuits, fuses, circuit breakers, and electrical equipment in a rooming house shall be maintained at all times:

(1) in good repair and working order, and

(2) free from fire and accident hazards.

Lighting and Ventilation

131. Every habitable room in a rooming house, except the kitchen, shall contain one or more windows or skylights that:

(1) are at least 50% above the level of the ground outside the wall in which they are installed,

(2) open directly to the outside air,

(3) have a total glass area of not less than 10% of the total floor area of the room.

132. All skylights, windows and window sashes in a rooming house shall:

(1) be glazed,

(2) be provided with proper and suitable hardware,

(3) open to the outside air to the extent of not less than 5% of the floor area of the room,

(4) be maintained in good repair, and

(5) be easily opened and closed at all times.

133. Portions of a window that are in a window well shall not be counted in computing the window area for the purposes of section **[95]** or the opening area for the purposes of section **[96]**.

134. Lighting equipment in good working order shall be provided and maintained at all times in every:

(1) stairway,

(2) hall,

(3) bathroom

(4) shower room,

(5) toilet room,

(6) basement or cellar,

(7) laundry room,

(8) furnace room,

(9) similar non-habitable work room, and

(10) kitchen,

in a rooming house.

135. Every habitable room, bathroom, shower room, and toilet room in a rooming house shall be provided with adequate natural or artificial means of ventilation.

136. Where any system of mechanical ventilation is provided in any room in a rooming house, it shall be:

(1) capable of completely changing the air in the room at least once per hour,

(2) maintained in good repair and working order at all times.

137. All enclosed spaces within a rooming house shall be adequately ventilated and access of sufficient size to permit entry shall be provided thereto and fitted with a door or panel to enclose the opening.

Common Areas

138. Every

(1) passageway,

(2) hallway,

(3) corridor,

(4) entrance,

(5) lobby,

(6) living room,

(7) dining room,

(8) recreation room,

(9) other area,

used in common by the occupants of a rooming house shall be maintained in a clean and sanitary condition.

139. Without limiting the generality of section **[102]**, the maintenance of such common areas includes:

(1) regular cleaning of the floors and the walls,

(2) covering the floors with a durable material that is free from cracks, holes, and other defects that retain dirt or are health or accidents hazards, and

(3) covering the walls and ceilings with a durable material that is resistant to cracking, scratching, or breaking or alternatively, regularly painting or decorating, so as to provide a finished surface which can be easily cleaned.

Utilities Not be Shut Off

140. No owner of a rooming house shall disconnect, shut off, remove, otherwise discontinue or cause or permit the disconnection, shutting off, removal or other discontinuance of any gas, water, steam, electric power, fuel oil or other service or utility serving a rooming house except when such action is necessary in order to safely make repairs, replacements, or alterations in, at or upon the rooming house and then only after personal notice is delivered to the individual rooming house units, and then only for the reasonable minimum time that such action is necessary, provided that without limiting the generality of the foregoing, an owner liable for rates for gas, water, steam, electric power, fuel oil or other service or utility who fails to pay such rates with the result that the gas, water, steam, electric power, fuel oil or other service or utility is disconnected, shut-off, removed or discontinued shall be deemed to have caused or permitted such disconnection, shutting-off, removal or discontinuance.

Use of Non-habitable Rooms

141. The owner shall not use or permit the use of a non- habitable room in a rooming house for a habitable room purpose, including sleeping purposes.

142. Where a room or part of a room in a rooming house does not exceed 1.4 meters in height, the floor area under a ceiling that is not more than 1.4 meters above the floor shall not be counted in computing the floor area of the room for the purposes of section **[105]**.

143. For the purposes of section **[105]**, a room that is less than 2 meters in height over more than one-half of the floor area shall be deemed to be a non-habitable room.

Basement Rooms

144. Where the floor of any portion of a rooming house is below the finished grade of the property, no person shall use or permit the use of that space or any part thereof as one or more habitable rooms except where, in addition to the other standards prescribed in this bylaw, the following requirements are met:

(1) The window area that provides natural light and ventilation shall be above the level of the surrounding ground; and

(2) Ventilation of rooms in such space shall be provided through doors or windows, or by means of a system of mechanical ventilation, including an exhaust fan, either of which shall be sufficient to completely change the air in such space at least once per hour.

(3) The floors and walls in the basement of a rooming house shall be so constructed as to be impervious to water leakage and shall be treated against dampness by the provision of an adequate vapour barrier.

(4) The floors in the basement of a rooming house shall be damp-proof and shall be covered with a permanent floor covering material other than paint, that prevents condensation.

(5) Each habitable room in a rooming house shall be separated from any room containing heating equipment by a fire resistant partition containing no opening other than an opening for a door with a door fitted therein and access to each habitable room shall not be gained by passage through a furnace room or a boiler room.

(6) Every furnace room and every boiler room in a rooming house shall be vented to provide sufficient combustion air for the heating equipment directly from the outside air.

(7) Where a laundry room that is used by the occupants of more than two (2) rooming house units is located in a basement or cellar, the laundry room shall be provided with a system of mechanical ventilation that is maintained in good working order, and capable of completely changing the air in the laundry room at least once per hour.

Dimension and Utility Standards

145. A rooming house shall contain at least one toilet and one sink for each nine (9) persons living in the rooming house.

146. A rooming house shall contain at least one bath tub or shower for each nine (9) persons living in the rooming house.

147. Except for a habitable room, no part of a rooming house shall be used for sleeping purposes.

148. A habitable room used for sleeping purposes in a rooming house shall have a floor area of at least 4 square meters for each occupant, and not less than 5.5 square meters overall.

149. Rooms in a rooming house shall have the following minimum area and width dimensions measured at floor level:

(1) Toilet Room (with toilet only): 1 square meter in area; 1 meter in width;

(2) Toilet Room (with basin): 1.4 square meters in area; 1 meter in width;

(3) Toilet Room (with bath & basin or shower & basin): 2.8 square meters in area; 1.25 meters in width;

(4) A Habitable Room: 6.0 square meters in area; 1.75 meters in width.

150. For purposes of the standards in this By-Law, the floor space in a rooming house at points where the sloping walls or ceilings are less than 1.4 meters above the floor in a vertical direction shall not be included in calculating the floor area.

Occupant's Duties

151. All parts of a rooming house which are occupied by a person other than the owner as defined herein and which are in the exclusive possession of the occupant shall be kept free from:

(1) rubbish, garbage and other debris,

(2) objects and conditions that are health, fire or accident hazards.

152. All garbage, rubbish, and other debris shall be stored by the occupants of a rooming house in the garbage enclosure provided by the owner.

153. The occupant of a rooming house shall maintain a safe, continuous and undisturbed passage from the interior of the rooming house unit to the exterior of the rooming house unit.

154. Cooking, heating and domestic hot water equipment, owned and installed in a rooming house by the occupant shall be maintained in good working order and repair.

155. The occupant of a rooming house unit shall not cause, permit or suffer the occupancy of the rooming house unit under his care or control to contravene the standards in this By-Law.

156. The occupant of a rooming house shall not prepare food in a room containing a toilet or urinal.

Penalties

157. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

158. Any person who contravenes sections **[insert section numbers of Offences governed by Payment in Lieu of Prosecution Policy]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount]** within **[14 days]** of the date of the notice and shall thereby avoid prosecution for that contravention.

Effective Date

159. The effective date of this By-Law is **[insert date, which must be no earlier than the projected date of advertisement of the passage of the By-Law]**.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this BOARDING HOUSES AND ROOMING HOUSE BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Boarding Houses and Rooming Houses By-Law Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

174 Without limiting the generality of Section 172, a council may make by-laws respecting

(a) the regulation and licensing of persons owning or operating rooming houses or boarding houses and regulating the maintenance, administration, operation and occupancy of buildings used as rooming houses or boarding houses and the land on which they are located;

See also section 172(2) in respect of licensing powers and section 181 in regards the legislative authority for minimum standards by-laws

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- The model By-Law creates a licensing procedure for owners of boarding houses and rooming houses and sets detailed standards for the physical characteristics and occupancy limitations of rooming houses.

- Both boarding houses and rooming houses are referred to as "rooming houses" in the By-Law. The By-Law applies where rooms are let to three or more separate tenants, although this amount can be increased or decreased if Council wishes: Section 2(9).

- Sections 8-16 create a rooming house license. For transitional purposes, section 9 requires lengthy advance application to be made for a rooming house license prior to the effective date of the licensing scheme, in order to allow for inspection of all facilities seeking a license before that time.

- Rooming house licenses are obtained through the office of the Building Inspector and require filing plan diagrams (not necessarily professionally drawn) of the floor layout of each storey showing the dimensions of each room: Section 10.

- The Building Inspector may issue a rooming house license with terms and conditions. Typically the license would be restricted to the maximum number of roomers for which application is made and other conditions may be stipulated as well to ensure conformity with the By-Law standards.

- The model By-Law provides for licenses to remain in effect for two years, although this time period can be varied by Council if it wishes: Section 13.

- Under sections 14 and 15, the Building Inspector can refuse to issue or can revoke or suspend a rooming house license for breach of the By-Law or of the terms or conditions of a license, but must give 10 days notice before doing so to the owner. There is a right of appeal to Council, although another body can be designated as the appellate body.

- The Building Inspector can issue a permit to board up a vacant rooming house: Sections 17-21.

- Under sections 22-27, the By-Law provides for the Building Inspector to inspect a rooming house and to issue remediation orders requiring owners or occupants to comply with the By-Law and the terms or conditions in the rooming house license. These remedial orders can be issued concurrently with a notice of suspension or revocation of a license, so that the **[Municipality]** may deal with both licensing discipline and remediation in the event the order is not complied with. The **[Municipality]** may carry out remediation in the event of failure to comply by the owner or occupant and may sue for remediation costs and, in the case of orders against the owner, can charge them back as a lien against the property: Sections 26-27.

- Sections 28-120 contain detailed standards regarding:

    - Rubbish;
    - Garbage disposal;

- Roofs;
- Exterior walls;
- Foundation walls and foundation supports;
- Structural soundness;
- Drainage;
- Exterior doors and windows;
- Egress;
- Stairs, balconies and porches;
- Walls and ceilings;
- Floors;
- Fireplaces, fuel burning equipment, chimneys, etc.;
- Heating system;
- Heating equipment connections;
- Plumbing and plumbing fixtures;
- Security;
- Kitchens;
- Electrical system;
- Lighting and ventilation;
- Common areas;
- Utilities not to be shut off;
- Use of non-habitable rooms;
- Basement rooms;
- Dimension and utility standards;
- Occupant's duties.

- The standards in sections 28-120 have been adapted from a City of Halifax Minimum Standards Ordinance. They should be reviewed in detail with the Municipal Building Inspector prior to adoption and modified to suit the needs of the municipal unit. No review has been undertaken in connection with the drafting of this By-Law to determine whether any of the standards are lower than those set out in the National Building Code.

- If a municipal unit has a Minimum Standards By-Law, it is unnecessary to duplicate the standards contained in such a By-Law. In that event, many of the standards can be deleted from the model by-law and section 6 should then be amended by adding after the words "minimum standards" text such as "and are in addition to and not in substitution for the standards set out in the Minimum Standards By-Law".

- A By-Law of this nature may have a severe impact on existing operators of boarding houses and rooming houses if their establishments do not meet the standards set out in the By-Law and if they cannot be brought up to standard at a modest cost. Council may wish to consider either or both of:

  - Providing a lengthy time period before the By-Law comes into force in section 123; or

  - Inserting a transitional "grandfather" clause along the following lines:

    "Rooming houses in existence in the **[Municipality]** on the effective date of this By-Law shall not be subject to the standards contained in this By-Law, to the extent that rooming houses do not comply with them on the effective date of this By-Law, provided however, that such rooming houses shall have to comply with the standards set out in the following sections of this By-Law upon and after the following effective dates: **[insert table of effective dates for particular standards]**"

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[121]** for general offences and s. **[122]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [11]
Fire and Burglar Alarm By-Law

160. This By-Law is entitled the "Fire and Burglar Alarm By-Law".

161. Nothing in this By-Law shall be construed as authorizing non-compliance with any laws, regulations, by-laws, lawful orders or directives pursuant to any statute, regulation or statutory or regulatory authority that may require the installation, maintenance or operation of alarm systems or which may specify standards in respect of the manufacture, installation, maintenance or operation of such systems.

162. In this By-law:

(7) "Alarm Coordinator" means the **[Building Inspector]** unless some other person has been appointed by **[the Chief Administrative Officer *OR* Council]** to administer this By-Law.

(8) "alarm system" means any mechanical or electrical device which emits a sound or transmits a signal or message when activated and which is designed or used for

(a) the detection of fire, heat, or smoke; or

(b) the detection of an actual or attempted unauthorized entry into a building, structure, fenced enclosure or other facility,

but does not include a device that is installed in a vehicle;

(9) "audible alarm" means an alarm system containing as a component or feature an audible sound generated by an activated alarm system on the premises in which the alarm system is installed;

(10) "automatic calling device" means any device, or combination of devices, that will, upon activation, either mechanically, electronically or by any

other automated means, initiate transmission of a signal or message, including a recorded message or an electronic signal, over telephone lines;

(11) "false alarm" means an alarm which results in the dispatch of a publicly funded fire protection or police service organization except when a legitimate activation event has occurred, provided however that an alarm shall be not be considered false if the owner can demonstrate to the reasonable satisfaction of the Alarm Coordinator that an alarm resulted from

(a) a windstorm, lightning, earthquake or other violent act of nature; or

(b) from the wrongful activation of an alarm by a person other than an employee or contractor of the owner;

(12) "legitimate activation event" means

(a) in the case of a fire, heat or smoke detection system, a condition of abnormal or excessive fire, heat or smoke; and

(b) in the case of a burglar alarm, an actual or attempted unauthorized entry.

(c) "monitored alarm system" means an alarm system where the signal of a legitimate activation event is automatically transmitted to a third party;

(d) "owner" means a person who owns, manages, possesses or controls premises or directs activity carried out on premises and includes a person shown on the Assessment Roll for the **[municipality]** as the assessed owner or occupant of the premises except where the **[municipality]** has been given notice in writing of a change in ownership or has been provided with the name of a person identified as having exclusive possession and control of the premises; and

(e) "publicly funded fire protection or police services organizations" includes the Royal Canadian Mounted Police, **[insert name of municipal police force if applicable,]** and **[insert name of municipal fire departments and brigades OR describe generically e.g. as "all fire brigades, departments or commissions for whose direct or indirect benefit the [municipality] collects taxes, or rates"].**

163. No person shall willfully cause the activation of an alarm in the absence of a legitimate activation event.

164. Except for an alarm system designed and used to detect heat, smoke or fire, no person shall install or operate an audible alarm, and no owner shall permit or acquiesce in the installation or operation of an audible alarm which sounds continually at the alarm-protected premises for a period of greater than fifteen minutes after each separate activation, if the sound made by the alarm is audible off the property on which the alarm has been installed.

165. Except for an alarm system designed and used to detect heat, smoke or fire, no person shall install or operate, or permit or acquiesce in the installation or operation of any automatic calling device designed or programmed to transmit a message to any telephone number assigned to a publicly funded fire protection or police service organization, or to a dispatch or communication centre responsible for the receiving and dispatching of alarm calls to such organizations.

166. When a third party is responsible for monitoring an alarm system for the detection of an actual or attempted unauthorized entry into a building, structure, fenced enclosure or other facility, that third party shall endeavor to verify that the alarm activation is not accidental by contacting the owner or occupant of the premises where the alarm is installed before notifying a publicly funded police services organization.

167. No owner shall cause, permit, or allow more than one false alarm to emanate from an alarm system during any consecutive 12 month period. Each additional false alarm within such period shall constitute a separate offence.

168. Following the first occurrence of an apparently false alarm within any consecutive period of 12 months,

(1) a notice shall be delivered to an owner of the alarm system that a false alarm has apparently occurred and that, in the event an owner disagrees that there was a false alarm, the owner shall have 3 weeks from the date of delivery of the notice to show cause to the Alarm Coordinator why the Alarm should not be considered false;

(2) the notice shall be in writing and may be delivered by hand or regular mail

(a) to the subject property to the attention of the occupant; and

(b) to the owner's name and address as contained in the tax roll;

(3) a notice sent in accordance with this section is deemed to have been delivered and received and, in the case of a notice sent by mail, is deemed to have been delivered 3 days after the date of mailing; and

(4) when an owner responds to the notice, the Alarm Coordinator shall make a determination of whether there was a false alarm, and the Alarm Coordinator's decision shall be final.

169. Any person who violates section **[4]** of this By-law is guilty of an offence punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

170. Any person who violates any other provision of this By-law is guilty of an offence punishable on summary conviction by a fine of not less than **[insert minimum fine**

amount] and not more than **[insert maxim ine amount]** and to imprisonment of not more than **[insert maximum impris aent]** in default of payment thereof.

171. Any person who contravenes section **[8]** of this By-Law and who is given notice of the contravention may pay to the **[municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this FIRE AND BURGLAR ALARM BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Fire and Burglar Alarm By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

174 Without limiting the generality of Section 172, a council may make by-laws respecting

...

(d) fire and burglar alarms;

172 (2) Without restricting the generality of subsection (1) but subject to Part VIII, a council may, in any by-law

(a) regulate or prohibit;

(a) regulate any development, activity, industry, business, animal or thing in different ways, divide each of them into classes and deal with each class in different ways;

...

(e) provide for a system of licences, permits or approvals, ...

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- This model by-law is designed to minimize excessive call-outs of emergency service providers and nuisance effects of noisy alarms. This model by-law is <u>not</u> intended to regulate the functioning of alarm systems. A Municipality which wishes to regulate alarm systems more intensively could consider a registration/permit system. There may be significant liability issues associated with such regulation, however, and it is suggested the matter be reviewed with the municipal solicitor before such a project is undertaken.

- The model by-law makes it an offence for a person to allow more than one false alarm in any 12 month period (s. 8). The model by-law contemplates that this would be a summary ticket offence (s. 12). Definition sections regarding false alarms and legitimate alarm activation events should be reviewed carefully by Council to ensure that the specified standards of care imposed on owners and the extent to which owners are responsible for actions of third parties are consistent with Council's wishes.

- The model by-law imposes certain requirements on owners of burglar alarms: the alarm is not to sound for more than 15 minutes following an activation event (s. 5); there is not to be any automatic calling device to the police or other emergency service (s. 6); and agencies monitoring burglar alarms are to call the site to rule out a false alarm before calling the police (s. 7). All of these requirements can be changed or omitted.

- The by-law makes it an offence for a person to willfully trigger a false alarm (s. 4). In light of the willful nature of the offence a higher penalty could be considered in s. 10 for this offence than for other offences (s. 11).

- Specific penalties can be contained in the By-Law by inserting appropriate values in ss. **[10 and 11]** for general offences and s. **[12]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [12]
Smoking By-Law

172. This By-Law is entitled the "Smoking By-Law".

173. Nothing in this By-Law shall be construed as

(1) authorizing smoking in places where smoking is otherwise lawfully prohibited by a proprietor or by any law, regulation, by-law, lawful order or directive pursuant to any statute, regulation or statutory or regulatory authority; or

(2) authorizing non-compliance with any laws, regulations, lawful orders or directives pursuant to any statute, regulation or statutory or regulatory authority that may require additional signage to be posted or other steps to be taken by proprietors of premises in connection with smoking.

174. In this By-law

(1) "licensed establishment" means a facility licensed or otherwise authorized by law to serve alcoholic beverages;

(2) "mandatory No Smoking place" means an indoor or enclosed place, including a motor vehicle where applicable which is

(a) a restaurant with a seating capacity of **[insert minimum#]** or more persons;

(b) a retail store;

(c) an amusement arcade;

(d) the common area of a shopping centre or shopping mall, including food court, hallway, elevator, escalator, stairway or washrooms, and any space generally accessible to shoppers;

(e) a bus or shuttle-bus operating entirely within the **[municipality]** which charges a tariff or fare to passengers;

(f) a room or space used for business, civic, political, religious, social, educational, entertainment or recreational gatherings of more than **[insert minimum number]** persons, on the occasion of such gatherings, except to the extent such gatherings are governed by subsection **[(7)]** of this section; or

(g) a lobby, reception/customer service area, hallway, elevator, escalator, stairway or washroom in a space which is regularly open to members of the public other than employees of the proprietor, such as

(i) a school, college, hospital, church, court or other institutional building regularly accessible to the public or to eligible members of the public;

(ii) a professional or business office (excepting offices in which no services are offered or provided to the public); or

(iii) a theatre, museum, concert hall, gymnasium, arena, hotel, motel or inn;

(3) "No Smoking area" means a mandatory No Smoking place, or a place designated as a No Smoking place by a proprietor pursuant to Section **[4]** of this By-Law, excluding a designated smoking area within such places that complies with the requirements of Section **[5]**;

(4) "place which optionally may be designated No Smoking" means an indoor or enclosed place which is

(a) a licensed establishment other than a restaurant;

(b) a restaurant with a seating capacity of less than **[insert minimum #: same as in subs (2)(a)]** persons;

(c) a place where the only trade or business carried on is that of the custom blending of tobaccos, or sale of tobaccos, pipes, cigars or smokers' sundries;

(d) a bowling alley;

(e) a bingo hall;

(f) a laundromat;

(g) a pool hall;

(h) a licensed taxi or limousine; or

(i) a casino;

(5) "proprietor" means a person who owns, manages, possesses or controls premises or directs activity carried out on premises and includes a person shown on the Assessment Roll for the **[municipality]** as the assessed owner or occupant of the premises except where the **[municipality]** has been given notice in writing of a change in ownership or has been provided with the name of a person identified as having exclusive possession and control of the premises;

(6) "reception/customer service area" means a space used for the receiving or greeting of customers, clients or other persons dealing with a provider of

services or goods, and includes any area adjoining such space that is not physically separated from it by solid walls, floors, and ceilings;

(7) "restaurant" means an establishment, other than a food court in a shopping mall, engaged in the sale and service of food for consumption on the premises, and includes a licensed dining room or licensed restaurant and a temporary use of a facility as a restaurant on the occasion of such uses, but excludes all other types of licensed establishment and, for purposes of this by-law, premises in which two or more businesses share common or adjoining seating that is not physically separated by solid walls, floors, and ceilings shall be considered a single restaurant with seating capacity equal to the total seating of the common or adjoining seating;

(8) "retail store" means a building or part of a building, booth, stall or place used for the purpose of retail trade including the retail sale of goods and/or services;

(9) "smoke" or "smoking" includes the possession of a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

175. The proprietor of a place which optionally may be designated No Smoking, may designate that place as a No Smoking place. Designation is effected by placing No Smoking signs in the manner set out in section **[7]** of this By-Law.

176. The proprietor of a mandatory No Smoking place or a place designated as a No Smoking place pursuant to section **[4]** of this By-Law may create designated smoking areas within those places as follows:

(1) in a restaurant with a total seating capacity of **[insert minimum #: same as in s. 3(2)(a)]** or more persons, provided that

(a) the proprietor shall not designate more than **[insert maximum percentage]** of the total seating capacity of the restaurant as a smoking area; and either

(b) the proprietor shall display a No Smoking sign on each table or other surface on which food is served for consumption in the portion of the restaurant that is not designated as a smoking area and such sign shall be clearly visible to prospective patrons of ordinary visual acuity; or

(c) the proprietor shall prominently display a sufficient number of No Smoking signs of sufficient size in the portion of the restaurant that is not designated as a smoking area such that No Smoking signage is clearly visible and readable to a person of ordinary visual acuity from all areas of the restaurant not designated as a smoking area and is unambiguously identified with particular seating in the restaurant;

(2) within any other mandatory No Smoking place, provided that

(a) the proprietor shall not so designate more than **[insert maximum percentage]** of the total area of such mandatory No Smoking place as a smoking area;

(b) the designated smoking area shall be separated by solid walls, floors and ceilings from, and shall not share a common ventilation system with, the remainder of the mandatory No Smoking place; and

(c) the designation of a smoking area shall not be carried out in a manner that would reduce or eliminate access to goods or services for persons wishing to be in a smoke-free indoor environment

relative to persons willing to make use of a designated smoking area;

177. No person shall smoke in a No Smoking area.

178. The proprietor of a No Smoking area shall ensure that a sufficient number of No Smoking signs of sufficient size are displayed in or around the area so that No Smoking signage is clearly visible and readable to persons of ordinary visual acuity

(1) at the normal points of entry into the area; or

(2) from all locations within the area.

Particular signage is not required for an individual part of a No Smoking area, such as a hallway, elevator, escalator, stairway or washroom where the signage as a whole indicates that it is prohibited to smoke in all parts, or in some parts including that particular part, of the No Smoking area.

179. Compliance with the standards contained within the Smoking Signage Standards attached to this By-Law shall be sufficient to ensure visibility and readability for purposes of this By-Law. Non-compliance with the Smoking Signage Standards shall not be a violation of this By-Law if signage otherwise meets this By-Law's requirements of visibility and readability.

180. The proprietor of a No Smoking area shall ensure that any person found smoking by the proprietor, or an employee or agent of the proprietor, in a No Smoking area is immediately directed to stop smoking, and, failing his or her compliance, is directed to leave the No Smoking area.

181. Failure by any person to comply with a directive lawfully given by a proprietor, or an employee or agent of a proprietor pursuant to section **[9]** of this By-Law is an offence punishable on summary conviction by a fine of not less than **[insert**

minimum fine amount] and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

182. Any person who violates any other provision of this By-law is guilty of an offence punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

183. Any person who contravenes section **[6]** of this By-Law and who is given notice of the contravention may pay to the **[municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Smoking Signage Standards

1. For the purpose of these Standards the letter height means the actual height of the letter regardless of whether it is a capital or lower case letter.

2. Signs affixed on doors of an establishment may be affixed at a height of 1.25 to 1.75 metres from the floor or ground and shall not be covered or otherwise obstructed from view. Minimum letter height shall be 25 millimetres.

3. Signs affixed elsewhere shall have lettering not less than the following heights, based upon the specified viewing distance in direct line of sight;

   (1) viewing distance of 3 metres or less; letter height of 25 millimetres;

   (2) viewing distance of between 3 and 6 metres; letter height of 50 millimetres;

(3) viewing distance of between 6 and 12 metres; letter height of 75 millimetres;

(4) viewing distance of between 12 and 24 metres; letter height of 100 millimetres;

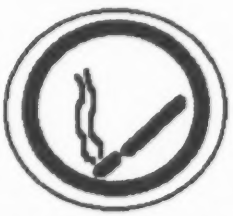
(5) viewing distance of greater than 24 metres; letter height of 200 millimetres.

4. The text "No Smoking" shall be used to designate an area where smoking is prohibited and the text "Smoking in This Area Only" to designate an area where smoking is permitted in capital or lower case letters or a combination of both.

5. Signage may consist of graphic symbols identified in this section in lieu of or in addition to text:

The following graphic symbol, when shown in green on a white background, may be used to indicate the areas where smoking is permitted:

(1)



(2) The following graphic symbol, when shown in red on a white background with a diagonal interdictory stroke in red, may be used to indicate No Smoking areas:

(3) The diameter of a circle in the symbol referred to in subsections (1) and (2) shall be not less than the following based on the specified viewing distance in direct line of sight:

(g) viewing distance of 3 metres or less: 100 millimetres;

(h) viewing distance of between 3 and 6 metres: 150 millimetres;

(i) viewing distance of between 6 and 12 metres: 200 millimetres;

(j) viewing distance of between 12 and 24 metres: 300 millimetres;

(k) viewing distance of more than 24 metres: 400 millimetres.

(4) The use of a cigarette in the graphic symbol in subsection (2) shall not be construed as limiting the symbol to prohibiting the smoking of cigarettes.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this SMOKING BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Smoking By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

172 (1) A council may make by-laws, for municipal purposes, respecting
(b) the health, well being, safety and protection of persons;
...
(c) persons, activities and things in, on or near a public place or place that is open to the public;

(2) Without restricting the generality of subsection (1) but subject to Part VIII, a council may, in any by-law
(a) regulate or prohibit;
(c) regulate any development, activity, industry, business, animal or thing in different ways, divide each of them into classes and deal with each class in different ways;

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- This model by-law enables Council to create mandatory No Smoking areas in certain types of places, such as the common areas of a shopping mall and restaurants of a certain size. Council should consider carefully the list of places which are included in the list of mandatory No Smoking places set out in s. 3(2) of the model by-law. The list should be made smaller or larger depending upon the wishes of Council.

- Additionally, in the model By-Law, an owner can optionally designate No Smoking areas in certain other types of establishment listed in s. 3(4). Again Council may wish to consider adding to this list or reducing the list and transferring some of the classes of enterprise into areas which are mandatory No Smoking places. If Council does not wish to enforce a smoking by-law in premises in which a No Smoking area is optional, the by-law can be limited to mandatory No Smoking areas by deleting the definition and all other references to optionally designated No Smoking areas.

- Within a mandatory No Smoking place or an optionally designated No Smoking place, an owner can create a designated smoking area. The requirements for creating a designated smoking area in s.5 of the model By-law are somewhat different for restaurants than they are for other facilities in recognition of the difficulties in creating physical barriers to the movement of smoke within existing restaurants and the perceived impact that strict standards would have on these businesses. However, these requirements can be adjusted if Council wishes.

- The model by-law requires proprietors to appropriately post No Smoking signs in No Smoking areas (s. 7). Specific guidelines are provided for No Smoking signage in an attachment at the conclusion of the model by-law. The use of those standards is not mandatory if a proprietor otherwise meets the requirements of visibility and readability in respect of required signage (s. 8). With some minor changes to the language, the standards may be made mandatory.

- The by-law makes it an offence for an individual to smoke in a No Smoking area (s. 6). The model by-law contemplates that this would be a summary ticket offence (s. 12).

- The by-law requires proprietors to take some enforcement steps when customers are smoking in a No Smoking area (s. 9).

- Specific penalties can be contained in the By-Law by inserting appropriate values in ss. **[10 and 11]** for general offences and s. **[12]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and

$10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [13]
Domestic and Wild Animals and Exotic Pets By-Law

61. This By-Law is entitled the "Domestic and Wild Animals and Exotic Pets By-Law".

62. In this By-Law:

(1) "destroy" means kill;

(2) "domestic or wild animal" includes reptiles, arachnids and birds;

(3) "livestock" means cattle, horses, ponies, mules, sheep, swine and goats;

(4) "**[Municipal]** Staff" means the **[Municipality's]** Animal Control Officer or a person appointed by the **[Chief Administrative Officer OR Council]** to act on the **[Municipality's]** behalf for the purposes of this By-law;

(5) "proscribed animal, reptile or arachnid" means:

(a) a poisonous snake or reptile;

(b) a non-poisonous snake whose adult length is two feet or more;

(c) a scorpion; or

(d) a poisonous spider;

63. This By-Law does not apply to livestock, dogs or domestic cats.

64. No person, unless duly licensed to carry on an exhibition, circus or other itinerant amusement performance, shall bring into the **[Municipality]**, possess, have the care or control of, or harbour a proscribed animal, reptile or arachnid.

65. No person owning, possessing, or having the care and control of a domestic or wild animal, or being a parent, guardian or custodian of a minor who owns, possesses, has the care or control of a domestic or wild animal shall cause, permit or suffer the domestic or wild animal to be at large within the **[Municipality]**.

66. For purposes of this By-Law, a domestic or wild animal is deemed to be at large, when it is not under physical restraint and control of some person by means of:

(1) enclosure inside an escape-proof building with the permission of the building's owner;

(2) enclosure inside an escape-proof aquarium, pen, cage or container of durable construction; or

(3) being securely tethered on a leash, harness, chain or other device in an escape-proof manner.

67. **[Municipal]** Staff may, without notice to or complaint against the owner, destroy on sight or after capture:

(1) a proscribed animal, reptile or arachnid which is found in the **[Municipality]**;

(2) a domestic or wild animal that is at large and which **[Municipal]** Staff believes, on reasonable and probable grounds, to pose a possible danger to a person or to a domestic animal or to property of persons other than the owner; and

(3) after **[one written warning has OR two written warnings have]** been given to the owner within any period of **[6]** months, a domestic or wild animal that is at large.

68. Any person who contravenes s. **[5]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice,

the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within fourteen (14) days of the date of the notice and shall thereby avoid prosecution for that contravention.

69. Any person who contravenes any provision of this By-Law is guilty of an offence punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading_____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this DOMESTIC AND WILD ANIMALS AND EXOTIC PETS BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Domestic and Wild Animals and Exotic Pets By-Law Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

172 (2) Without restricting the generality of subsection (1) but subject to Part VIII, a council may, in any by-law:

...

(b) regulate any development, activity, industry, business, animal or thing in different ways, divide each of them into classes and deal with each class in different ways;

174 Without limited the generality of Section 172, a council may make by-laws respecting

...

(f) wild and domestic animals and activities in relation to them.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- The By-Law does not apply to dogs or cats, which are normally dealt with separately in their own by-laws. Nor does it apply to farm livestock which is

governed by provincial legislation such as the *Fences and Detention of Stray Livestock Act*.

- This model by-law prohibits bringing into the Municipality certain reptiles or arachnids. The proscribed animals identified in s. **[2]** are poisonous except for non-poisonous snakes whose adult length is 2 feet or more. Large non-poisonous snakes are included because of the fear that they engender amongst large sections of the public. The list of proscribed animals can be varied by Council.

- The model By-Law also prohibits keeping other domestic or wild animals except under physical restraint. Some Councils may find this approach sufficient control regarding exotic pet regulation and may dispense with outright prohibition on the keeping of poisonous reptiles or long snakes as provided for in the Model By-Law. Alternatively, some municipalities may not wish to enforce by requiring secure containment of animals, in which case sections 3, 5-7 and the first 4 definitions in section 2 can be deleted.

- Section 7 involves the drastic remedy of destroying animals apprehended in contravention of the By-Law. There may be question as to the validity of this provision, in light of the absence of specific authority for it, compared with the detailed authority in sections 175(1)(h) and 178 of the *M.G.A.* Legal advice should be sought before including such a provision. In any event, Council should carefully consider whether they wish to provide this power to staff.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[9]** for general offences and s. **[8]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [14]
Dog By-Law

Title

1. This By-Law is entitled the "Dog By-Law".

Definitions

2. In this By-Law:

   (1) "destroy" means kill;

   (2) "dog" means any dog, male or female, or any animal that is the result of the breeding of a dog with any other animal;

   (3) "domestic animal" includes pets and farm animals;

   (4) "extraordinary expense" means any expense incurred by **[Municipal]** Staff in relation to a dog except for provision of food and shelter;

   (5) "fierce or dangerous dog" has the meaning stipulated in s. **[16]** of this By-Law;

   (6) "mitigating factor" means a circumstance which excuses the aggressive behaviour of a dog where:

      (i) the dog, at the time of the aggressive behaviour, attacked or injured any trespasser on property occupied by its owner;

      (ii) the dog, immediately prior to the aggressive behaviour, was being abused or tormented by the person attacked or injured;

(7) "**[Municipal]** Staff" means the **[Municipality's]** Dog Control Officer or a person appointed by the Chief Administrative Officer or Council to act on the **[Municipality's]** behalf for the purposes of this By-Law, and includes the Pound Keeper;

(8) "non-rural areas" means those areas within the **[Municipality] [which are serviced by [Municipal] sanitary sewer as shown on a Map appended hereto entitled "[insert name of map]"] [OR which are subject to a Land Use By-Law and which are zoned to a use other than [for example "Rural General" or "Agricultural"]] [OR which are subject to the [Municipality]'s Urban Service area tax rate].**

(9) "owner" means the owner of a dog and any person who possesses, has the care or control of, or harbours a dog and, where such a person is a minor, includes a parent, guardian or custodian of such a person;

(10) "wolf-dog hybrid" means any animal which results from the breeding of a dog and a wolf or that is or has been advertised or held out for sale as such;

Registration

3. On or before the **[20th day of January]** in each year the owner of any dog shall register such dog with the **[Municipal]** Staff and obtain from the **[Municipal]** Staff a tag for such dog.

4. Every owner of a dog shall, within ten (10) days of having become owner, register such dog with **[Municipal]** Staff and obtain from **[Municipal]** Staff a tag for such dog.

5. In order to register a dog, an owner shall pay the annual registration fee of **[insert amount]** for each spayed or neutered dog and **[insert amount]** for each other dog and shall supply **[Municipal]** Staff with the following:

   (1) Name, civic address, mailing address and telephone number of the owner;

   (2) Name and breed of the dog;

   (3) Description of the dog including whether the dog is male or female, spayed or unspayed or neutered or unneutered as the case may be;

   and, at the discretion of the owner, the following additional information may be supplied:

   (4) A photograph of the dog;

   (5) Identification information such as micro-chip implants, tattoos or other special markings; and

   (6) The name of the veterinary clinic frequented by the dog and veterinary file ID number.

6. Registration shall be effective until the **[20th day of January]** in the year following the year of registration.

7. The registration fee shall be reduced by 50% in the year of acquisition where the owner acquires ownership of the dog after June 30th.

8. The following are exempt from registration:

   (1) the **[Municipal]** Staff or Pound Keeper or **[insert local chapter name or names]** of the SPCA shall not be required to register a stray;

   (2) a dog shall be exempt from registration and registration fees in the event the owner proves that the dog is under the age of three months; and,

(3) if a fee of **[insert amount]** per breeding female kept at the kennel on January 1 is paid by the owner of a kennel of pure-bred dogs that are registered with the Canadian Kennel Association by **[January 20]** of that year, the owner of the kennel is exempt from any further fee in respect to dogs kept at the kennel that year.

9. A dog that is trained to assist and assists a person with a disability is exempt from paying a registration fee but not from registration.

10. The owner of every dog shall keep on the dog a collar with the tag issued for that dog by **[Municipal]** Staff at the time of registration and such tag shall be kept securely fixed on the dog at all times during the year until a replacement tag is issued, except that such tag may be removed while the dog is being used for lawful hunting purposes in the presence and under the control of the dog's owner and wearing a collar bearing the owner's name and address.

11. The owner of a dog shall deliver in writing to the **[Municipal]** Staff a statement of the number of dogs owned or harboured, or that are kept upon the premises occupied by the owner within 10 days after having received notice requiring it to be provided.

Dog Control and Pound

12. **[Municipal]** Staff shall be responsible for the enforcement of this By-Law.

13. Council shall appoint a Pound Keeper who shall:

(1) collect on behalf of the **[Municipality]** any Impounding Fees, Daily Pound Fees and any other additional charges or fees as are authorized in this By-Law and as may be set by resolution of Council;

(2) be responsible for the operation of the pound;

(3) provide adequate food and water to impounded dogs;

(4) keep the pound in a reasonable state of cleanliness;

(5) keep the pound premises neat and tidy in appearance.

Dogs Running At Large

14. Any dog which is off the premises occupied by the owner without being under the continuous restraint and control of some person is deemed to be running at large for the purposes of this By-Law. A dog which is tethered on a tether of sufficient length to permit the dog to leave the property boundaries of the premises occupied by the owner is deemed to be running at large.

15. In non-rural areas the owner of a dog shall, while the dog is off the premises occupied by the owner, keep the dog under control by means of a harness or leash, and the dog shall be deemed to be running at large where the owner fails to use such apparatus, except that an unleashed and unharnessed dog that is under continuous human restraint and control shall not be deemed to be running at large if at the time the dog is:

    (1) participating in an organized hunt, dog exhibition event or dog field trials;

    (2) participating in a search and rescue operation or law-enforcement operation;

    (3) assisting a person with a disability, provided the dog is trained for such purpose; or

    (4) within a municipal public park where the area is designated by signage as an area in which dogs are permitted to be without a leash subject to such limitations as are posted.

Fierce or Dangerous Dogs

16. For purpose of this By-Law a dog that is fierce or dangerous means any dog:

    (1) that is a wolf-dog hybrid;

(2) that, in the absence of a mitigating factor as defined herein, has attacked or injured a person;

(3) that, in the absence of a mitigating factor as defined herein, has injured a domestic animal;

(4) that, in the absence of a mitigating factor as defined herein, when either unmuzzled or unleashed, in a vicious or terrorizing manner, approaches any person in an apparent attitude of attack upon streets, sidewalks, any public grounds or places, or on private property other than the property of the owner;

(5) owned or harboured in whole or in part for the purpose of dog fighting; or

(6) trained for dog fighting;

provided that no dog shall be deemed fierce or dangerous if it is a professionally trained guard dog while lawfully engaged for law enforcement.

Responsibilities of Owners

17. Every owner of a dog

(1) whose dog runs at large;

(2) whose dog is not wearing a tag required by this By-Law;

(3) whose dog is not registered pursuant to this By-Law;

(4) whose dog persistently disturbs the quiet of the neighbourhood by barking, howling or otherwise;

(5) who neglects or refuses to provide a written statement required by this By-Law;

(6) who harbours, keeps, or has under care, control or direction a dog that is fierce or dangerous;

(7) who fails to remove the feces of a dog, other than a dog that is trained to assist and is assisting a person with a disability, from public property or private property other than the owners;

is in contravention of the By-Law.

Impounding

18. **[Municipal]** Staff may, without notice to or complaint against the owner, impound any dog that:

(1) runs at large contrary to this By-Law;

(2) is not wearing a tag required by this By-Law;

(3) is not registered pursuant to this By-Law;

(4) is fierce or dangerous;

(5) is rabid or appears to be rabid or exhibits symptoms of canine madness; or

(6) persistently disturbs the quiet of the neighbourhood by barking, howling or otherwise.

19. An Impounding Fee of **[insert amount]** and a Daily Pound Fee of **[insert amount]** shall be payable by any person seeking to redeem an impounded dog.

20. Subject to Sections **[21 to 24]** of this By-Law, except in the case where a dog is impounded for being fierce or dangerous, or is rabid or exhibits symptoms of canine madness, the owner of a dog which has been impounded, upon proof of ownership of the dog, may redeem the dog after payment to the Pound Keeper, or making

arrangement for payment satisfactory to the Pound Keeper, of the Impounding Fee and the Daily Pound Fee(s), along with reimbursement for any Extraordinary Expenses incurred by the **[Municipal]** Staff in relation to the dog.

21. In the case of redemption of a dog which has not been registered pursuant to this By-Law, the owner shall also be required to register the dog and pay the registration fee before being allowed to redeem the dog.

22. Any dog which has not been redeemed by its owner at the expiry of a period of **[72 hours]** after being impounded may be given away, sold or killed by the Pound Keeper and, if sold, the proceeds shall belong to the **[Municipality]**.

23. Whenever the **[72 hours]** of impounding time expires on a weekend, the Pound Keeper shall hold such dog until the expiry of the first business day following the weekend to permit the owner to redeem the dog.

Notice

24. Upon any dog being impounded the Pound Keeper shall check for a tag and if a tag is found, the Pound Keeper shall make at least **[one attempt]** to contact the registered owner of the dog using the tag number on the records of **[Municipal]** Staff. Provided however that if a dog is missing, the onus is on the owner of the dog to ascertain within the time period provided for impounding under this By-Law, whether the dog has been impounded, and neither the Pound Keeper nor the **[Municipality]** shall incur liability in the event of failure to give Notice to the owner, if the owner has not made inquiry of the Pound Keeper to determine whether the dog was impounded.

Destroying

25. **[Municipal]** Staff may, without notice to or complaint against the owner, destroy on sight or after capture any dog that:

    (1) is fierce or dangerous;

    (2) is rabid or appears to be rabid or exhibits symptoms of canine madness.

26. **[Municipal]** Staff may, after **[two written warnings]** have been given to the owner that a dog has been running at large or eluding capture, kill such dog on sight or after capture.

27. **[Municipal]** Staff may, kill on sight any dog that is running at large and which he or she believes, on reasonable and probable grounds, to pose a danger to a person or a domestic animal or to property of persons other than the owner.

Penalty

28. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

29. Any person who contravenes sections **[insert section numbers of Payment in Lieu of Prosecution Offences]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution Policy]** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this DOG BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Dog By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

175 (1) Without limiting the generality of Section 172, a council may make by-laws

(a) regulating the running at large of dogs, including permitting the running at large of dogs in certain places or at certain times;

(b) imposing a registration fee upon the owner of every dog, the amount to be set by policy, for such length of time as is specified in the by-law with the power to impose a larger fee for female dogs than for male dogs, or for unspayed or unneutered dogs than for spayed or neutered dogs;

(c) requiring tags for the identification of dogs registered under the by-law;

(d) exempting from any registration fee a dog that is a stray dog and is harboured for up to the maximum period of time set by by-law;

(e) defining fierce or dangerous dogs, including defining them by breed, cross-breed, partial breed or type;

(f) regulating the keeping of fierce or dangerous dogs;

(g) prohibiting the keeping of a dog that persistently disturbs the quiet of the neighbourhood by barking, howling, or otherwise;

(h) authorizing the dog control officer to impound, sell, kill or otherwise dispose of dogs

(i) that run at large contrary to the by-law,

(ii) in respect of which the fee or tax imposed by a by-law is not paid,

(iii) that are fierce or dangerous,

(iv) that are rabid or appear to be rabid or exhibiting symptoms of canine madness,

(v) that persistently disturb the quiet of a neighbourhood by barking, howling or otherwise;

(i) requiring the owner of a dog, other than a dog that is trained to assist and is assisting a person with a disability, to remove the dog's feces from public property and from private property other than the owner's;

(j) requiring the owner of a dog to provide a written statement of the number of dogs owned, harboured or that are habitually kept upon the premises occupied by the owner.

(2) A dog that is trained to assist and assists a person with a disability is exempt from any registration fee.

(3) Where a dog tag is required by by-law, the dog tag shall bear a serial number and the year in which it is issued and a record shall be kept showing the name and address of the owner and the serial number of the tag.

(4) The owner of a kennel of purebred dogs that are registered with the Canadian Kennel Club may, in any year, pay a fee set by council, by policy, as a tax upon the kennel for that year and upon payment of the amount, the owner of the kennel is exempt from any further fee regarding the dogs for that year.

(5) Where required by by-law to do so, the owner of a dog may enter upon private property to remove the dog's feces.

176 (1) Where a peace officer believes, on reasonable grounds, that a person is harbouring, keeping or has under care, control or direction a dog that is fierce or dangerous, rabid or appears to be rabid, that exhibits symptoms of canine madness or that persistently disturbs the quiet of a neighbourhood by barking, howling or otherwise, a justice of the peace may, by warrant, authorize and empower the person named in the warrant to

(a) enter and search the place where the dog is, at any time;

(b) open or remove any obstacle preventing access to the dog; and

(c) seize and deliver the dog to the pound and for such purpose, break, remove or undo any fastening of the dog to the premises.

(2) Where the person named in the warrant is unable to seize the dog in safety, the person may destroy the dog.

(3) The peace officer shall appear before, and satisfy, the justice of the peace of the grounds for belief before a warrant pursuant to this Section may be issued.

177 At the trial of a charge laid against the owner of a dog that is fierce or dangerous contrary to a by-law, in addition to the penalty, the judge may order that the

(a) dog be destroyed or otherwise dealt with; and

(b) owner pay any costs incurred by the municipality related to the dog, including costs related to the seizure, impounding, or destruction of the dog,

and it is not necessary to prove that the

(c) dog previously attacked or injured a domestic animal, person or property;

(d) dog had a propensity to injure or to damage a domestic animal, person or property; or

(e) defendant knew that the dog had such propensity or was, or is, accustomed to doing acts causing injury or damage.

178 A person may kill or destroy a rabid dog or other rabid animal found at large and may secure and confine a dog or other animal at large and appearing to be rabid or exhibiting symptoms of canine madness.

179 Upon the trial of an action brought against the owner or harbourer of a dog for any injury caused, or damage occasioned by, such dog, it is not

necessary to prove knowledge by, or notice to, the owner or harbourer of any mischievous propensity of the dog.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- The model By-Law requires registration of dogs and payment of annual licensing fees, to be set in s. **[5]** of the By-Law. Typically, many municipalities charge a lesser fee for registering a spayed female or neutered male, than for unaltered dogs.

- The model By-Law provides for appointment of a pound-keeper in s. **[13]**. This may be a contracted service-provider, rather than an employee, if the municipality wishes.

- Sections **[14]** defines what is meant by a dog running at large. In non-rural areas, or possibly in all areas, Council may wish to require a dog to be on a leash except when the dog is on the owner's property as illustrated in section **[15]**, along with the sample definitions of "non-rural areas" found in subs. **[1(7)]**.

- The model By-Law should contain a definition of a "fierce or dangerous" dog. The provisions in section **[16]** generally do so having regard to both the conduct of the dog and the training or purpose for which the dog is kept. Although most municipalities have not chosen to do so, it is open to Council to define by breed, cross-breed, partial breed or type, if Council wishes to proscribe completely certain breeds considered dangerous and the Model By-Law provides an illustration in regards wolf-dog hybrids. The phrase "mitigating factor" is a defined term in s. **[2 (6)]**.

- Section **[17]** contains the offences of dog owners and sections **[18 to 24]** provide powers to impound untagged dogs or dogs otherwise offending the By-Law and provide for the owner to redeem the dog by payment of fees, within a set period, failing which the dog may be put down.

- Sections **[25 to 27]** allow for the Dog Control Officer to kill dogs on sight in specified situations.

- If a dog cannot be impounded or killed because it is inaccessible on private property, s. 176 of the *Act* provides for a Court authorization to be obtained to effect entry and seizure.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[28]** for general offences and s. **[29]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [15]
Deed Transfer Tax By-Law

1. This By-Law is entitled the "Deed Transfer Tax By-Law".

2. A deed transfer tax applies in the **[Municipality]**.

3. The rate of the deed transfer tax in the **[Municipality]** is **[insert tax rate: not greater than 1.5]** percent of the value of the property transferred.

4. **[The Registrar of Deeds shall be the agent and collector of the deed transfer tax for the [Municipality] in accordance with the agreement to that effect between the [Municipality] and the Minister of Housing and Municipal Affairs.]**

5. Chapter **[insert the Municipality's chapter #]** of the By-Laws of the **[Municipality]**, is repealed and this By-Law is substituted in its place.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this DEED TRANSFER TAX BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Deed Transfer Tax By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

102 (1)A council may determine, by by-law, that a deed transfer tax applies in the municipality and the rate of the deed transfer tax, but the rate of the deed transfer tax shall not exceed one and one half per cent of the value of the property transferred.

110 Where the council and the Minister agree that the Registrar of Deeds is to be the municipality's agent and collector of the deed transfer tax, the Registrar is the municipality's agent and collector and has all of the powers of the treasurer pursuant to this Part.

Important Notice

The model by-law has been drafted as a replacement for an existing by-law, and assumes that the Minister and the municipality have reached an agreement concerning the Registrar acting as the municipality's deed transfer tax collector. Please review the comments below regarding suggested modifications where these assumptions do not apply.

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- The *MGA* has altered some of the exemptions which were formerly contained within the *Deed Transfer Tax Act* and which were reproduced in the existing by-laws of several municipalities. In particular, the former legislation, which is now repealed by the *MGA*, exempted deed transfers between certain affiliated companies. It is desirable that municipal by-laws not contain provisions that are inconsistent with the enabling legislation. Those municipal units that have

reproduced in their existing by-law the exemptions set out in the *Deed Transfer Tax Act* should consider enacting a by-law such as the model by-law.

- Municipalities that do not currently have a deed transfer tax may implement one by enacting this draft, but deleting section 5. For such municipalities, a further modification should be considered: the words "Effective on **[insert future date after the expected date of publication of the new by-law]**" could be added at the beginning of section 2 to assist in public information about when the new tax will be effective. The same insert could be made at the beginning of section 3 (instead of in section 2) for municipalities who are changing their deed transfer tax rates.

- Where the municipality has not made and is not making an agreement with the Minister of Housing and Municipal Affairs concerning the Registrar collecting this tax for the municipality, section 4 should be deleted. An agreement with the Minister to that effect can be made at any time without the necessity of amending the By-Law. If an agreement has not previously been approved by Council, a resolution approving an agreement negotiated by staff with the Minister could be passed by Council at the same meeting in which 2nd reading is given to the By-Law.

- The rate of tax in section 3 must not exceed 1.5, and can be expressed plainly in numerical format as "0.5", "1.0" or "1.5" for example.

- The *MGA* sets out the full details of the deed transfer tax in Part V. There is no need to attempt to reproduce the details in the municipal by-law.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law (and appearing in section 5).

Chapter [16]
Vending By-Law

Title

184. This By-Law is entitled the "Vending By-Law".

Definitions

185. In this By-Law:

(1) "abutter" means the owner, lessee or occupier of any premises or lot in the **[Municipality]** which abuts a **[Municipal]** street;

(2) "crosswalk" means that portion of a roadway ordinarily included within the prolongation or connection of curb lines or the edge of a roadway and property lines at intersections or any portion of a roadway clearly indicated for pedestrian crossings by lines or other markings on the road surface;

(3) "flea market" means an outdoor market at which persons are rented or provided space for a fee or rent for the purpose of selling new or used merchandise to the public;

(4) "garden centre" means an outdoor area used for the sale for profit of household lawn and garden products;

(5) "linear meters" means the length of the longest dimension of a fixed stand;

(6) "mobile canteen" means a vehicle used for the display, storage, transportation or sale of food or beverages by a mobile vendor;

(7) "mobile stand" means a stand having any wheels with a diameter in excess of **[10 cm.]** or having or designed to have removable wheels of such diameter, and each such stand capable of being moved as a separate unit shall be counted as a separate mobile stand;

(8) "non-mobile stand" means a stand that is not a mobile stand;

(9) "public places" means:

(a) streets;

(b) property owned by the **[Municipality]**;

(c) property owned by the Province of Nova Scotia that is open to the public; and

(d) public parks and trails; and

"in, on or near a public place" includes locations that are

(e) driveways, parking lots, and vacant or undeveloped lots any portion of which is within 25 metres of a public place;

(f) within 25 metres of a public place; or

(g) visible from a public place;

(10) "roadway" means that portion of a street between the curb lines or the traveled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;

(11) "sidewalk" means that portion of a street between the curb line and adjacent property line or any part of the street especially set aside for pedestrian travel and separated from the roadway;

(12) "stand" includes a table, showcase, bench, rack, pushcart, wagon or wheeled vehicle or device that can be moved without the assistance of a

motor and is used for the display, storage, transportation or sale of food, beverages or other merchandise by a mobile vendor;

(13) "street" means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith;

(14) "vend" or "vending" means the sale, or offering for sale, outside an enclosed building of

(h) food, beverages or other merchandise, unless they are immediately delivered to a residence or shop by the person selling them,

(i) services, unless they are provided in a building;

(15) "vending machine" means a mechanical or electronic device that

(a) is operated by the introduction of a coin, counter or slug, and

(b) dispenses food, beverages, goods, wares or services, including newspapers and other publications;

and

(16) "yard sale" means a sale of surplus household goods by the occupants or neighbours of the residential property at which the sale is carried on.

Vending Machines

186. The **[Council OR CAO]** may by written instrument lease space **[for a term not to exceed one year]** for vending machines on streets or other public places owned by the **[Municipality]** and vending machines operated in compliance with the terms of such leases do not contravene this By-Law.

187. Vending machines placed and operated in compliance with the terms of any valid and subsisting written lease, license or permission from the property owner upon which they are situate do not contravene this By-Law.

188. Subject to **[sections 3 and 4]**, vending machines shall not be placed or used outdoors.

Vending on Abutting Streets or Land

189. On the streets, or portions of streets, identified in Schedule "A" to this By-Law, and on properties abutting them, vending carried out at non-mobile stands by abutters who operate a retail commercial enterprise in the abutting property, during the hours that the abutting retail commercial enterprise is open for business does not contravene this By-Law if it is carried out in compliance with section **[22]** of this By-Law **[and on such days as are stipulated in Schedule "A"]**.

Yard Sales

190. Subject to section **[8]**, yard sales on private property **[between 7:30 a.m. and 7:30 p.m.]** on **[e.g. Saturdays OR Saturdays and Sundays OR the first Saturday in each month]** do not contravene this By-Law provided that:

(1) the owner of the property upon which the yard sale vending is occurring expressly authorizes such yard sale vending;

(2) the property owner and the yard sale vendor do not set up or place, or allow to be set up or placed, outside in a location visible from a public place any yard sale vending merchandise, stands or equipment before 12 hours in advance of the time that the yard sale vending is permitted to begin pursuant to this By-Law; and

(3) the property owner and the yard sale vendor do not leave or allow to be left outside in a location visible from a public place any yard sale vending

merchandise, stands or equipment more than 12 hours after the time that the yard sale vending is required to cease pursuant to this By-Law.

191. Council may by resolution designate properties upon which yard sales are not permitted to occur, upon recommendation or advice from the **[Traffic Authority]** that yard sales at such properties are or may cause a safety hazard or an obstruction to traffic.

Farmers Markets

192. Vending at specific farmers market**[s]** designated by resolution of Council does not contravene this By-Law.

Prohibition

193. Except as expressly authorized by sections **[3 to 9]** of this By-Law, no person

(1) shall vend at flea markets or garden centres in the **[Municipality]** except in accordance with the terms and conditions of a Vending Permit;

(2) shall otherwise vend in, on or near a public place in the **[Municipality]** except in accordance with the terms and conditions of a Vending Permit

194. In accordance with, and subject to, the provisions of this By-Law, Vending Permits may be obtained for the vending:

(1) of food and beverages at mobile canteens on streets and at specifically identified other locations;

(2) of food and beverages and other merchandise or services at stands at specifically identified locations;

(3) of merchandise at flea markets at specifically identified locations situated on private property during any 6 months of the year; and

(4) of garden products at garden centres at specifically identified locations situated on private property during any 6 months of the year.

195. All Vending Permits shall be obtained by application to the **[By-Law Enforcement Officer]**. The application for a Vending Permit, or an amendment to a Vending Permit, shall be made in writing, in duplicate, on such form as may be specified by the **[By-Law Enforcement Officer]** from time to time, and signed by the person applying therefore. Every application for a Vending Permit shall contain the following information:

(1) the name, postal and civic address and phone number of the applicant;

(2) the maximum number of

(a) mobile canteens;

(b) mobile stands;

(c) linear meters of non-mobile stands;

(d) square meters of garden centre space or flea market space

for which a Vending Permit is sought;

(3) whether the application is for a permit:

(a) for a full year;

(b) for a season of 6 months or less, and, if so, the dates of the season for which the permit is sought; or

(c) for one or more occasions on less than **[10]** days in any year, and if so, the dates for which the permit is sought;

(4) in the case of permits for mobile canteens:

(a) the provincial motor vehicle registration number and description by make, model, and year of any vehicles to be used by the applicant as a mobile canteen;

(b) confirmation that the applicant will

(i) maintain throughout the period for which the permit is sought, insurance for third party liability on each mobile canteen in an amount of not less than **[$1 million]** per occurrence,

(ii) only allow the mobile canteen to be driven by operators with valid operators' permits of the requisite class for that type of vehicle, and

(iii) only operate or allow the operation of the mobile canteen in accordance with all requirements pursuant to the *Health Act* and *Regulations* and other applicable enactments;

(c) a description of the foods and beverages to be sold at each mobile canteen;

(d) a description of the areas in the **[Municipality]** in which each mobile canteen will sell food and beverages to the public;

(e) a photograph of each mobile canteen;

(5) in the case of permits for stands:

(a) where the stand is to be used for the sale of foods and beverages, confirmation that the applicant will only operate or allow the operation of the stand in accordance with all requirements pursuant to the *Health Act* and *Regulations* and other applicable enactments;

(b) a description of the foods and beverages or other merchandise or services to be sold at each stand;

(c) where the stand is a mobile stand:

(i) a description of the areas in the **[Municipality]** in which each mobile stand will sell food and beverages to the public; and

(ii) a photograph of each mobile stand or, where several stands have the same appearance, of each type of mobile stand;

(d) where the stand is a non-mobile stand:

(i) the precise location, described by civic address and a plan diagram showing the sidewalk dimensions and all other dimensions relevant to the provisions of this By-Law, at which the stand will be operated; and

(ii) the maximum dimensions of the stand and a description of whether it is a table, bench, showcase, or rack;

(6) in the case of permits for garden centres or flea markets:

(a) the precise location, described by civic address and a plan diagram showing the dimensions and layout of the garden centre or flea market; and

(b) the maximum dimensions of the product display space;

(7) the permit fee pursuant to section **[13]**; and

(8) where applicable, the civic address of any public places other than streets at which the applicant seeks permission to vend, along with written

authorization from the owner of such property for the vending to occur there;

196. The fee for a Vending Permit shall be as indicated in the following Table:

	One Year Permits	Seasonal Permits (less than 6 mos.)	Occasional Permits (less than 10 days)
Mobile Canteen (fee per canteen)	**[Insert Amount]**	**[Insert Amount]**	**[Insert Amount]**
Garden Centres (fee per sq metre of product display space, excluding aisles)	Not Applicable	**[Insert Amount]**	Not applicable
Flea Markets (fee per sq metre of product display space, excluding aisles)	Not Applicable	**[Insert Amount]**	Not applicable
Mobile Stand (fee per stand)	**[Insert Amount]**	**[Insert Amount]**	**[Insert Amount]**
Non-Mobile Stand (fee per linear meter or portion thereof)	**[Insert Amount]**	**[Insert Amount]**	**[Insert Amount]**

197. A Vending Permit shall not be issued in respect of vending goods or services that are not permitted to be vended, or the vending of which is regulated, by valid Federal, Provincial statutes or regulations or by-laws of the **[Municipality]**, except

in accordance with such regulatory requirements, and compliance with such regulatory requirements shall be deemed to be a term and condition of every Vending Permit.

198. Subject to the other provisions of this By-Law, the **[By-Law Enforcement Officer]** shall issue a separate numbered Vending Permit, containing terms and conditions consistent with this By-Law and the permit application, for each mobile stand, garden centre, flea market or mobile canteen and for each non-mobile stand location which complies with the requirements of this By-Law.

199. In the event of a change in ownership of the person owning a mobile canteen, garden centre or a stand for which a permit has been issued, or a substitution of a new mobile canteen, garden centre, flea market or mobile stand for one for which a permit has been issued, the owner, or the new owner in the case of a change in ownership, shall notify the **[By-Law Enforcement Officer]** in writing of the applicable new information and the Permit shall be amended accordingly without a fee.

200. A Vending Permit shall remain in effect for a period of not more than one year from the date of issuance.

201. The **[By-Law Enforcement Officer]** may refuse to issue, renew or amend, or may revoke or suspend a Vending Permit for breach of this or any other By-Law or of the terms or conditions of a permit upon notice to an applicant or permit holder.

202. A person aggrieved by a decision of the **[By-Law Enforcement Officer]** pursuant to section **[14]** may appeal that decision to **[Council]** within **[15 days]** of its mailing to the applicant or permit holder, by written notice of appeal to the Clerk.

203. After the hearing of an appeal, **[Council]** may confirm, rescind or vary the decision of the **[By-Law Enforcement Officer]**.

204. A Vending Permit issued under this By-Law shall be conspicuously displayed on the mobile stand, garden centre, flea market or mobile canteen or on or next to a non-mobile stand to which it relates so as to be clearly visible from the street at all times during which goods or services are being offered for sale pursuant to this By-Law.

205. No person, with or without a Vending Permit, shall:

(1) vend in any area of the **[Municipality]** listed in Schedule "B" to this By-Law **[insert Schedule "B" listing prohibited areas for operation of mobile canteens or stands]**;

(2) vend within **[100 meters]** of the grounds of any school between 1/2 hour prior to the start of the school day and 1/2 hour after dismissal at the end of the school day;

(3) **[vend between e.g. 10:00 p.m. and 8:00 a.m. of the following day]**;

(4) leave any stand or mobile canteen unattended on a street;

(5) sell food or beverages for immediate consumption unless there is available for public use a suitable litter receptacle for the use of customers;

(6) leave any vending location without first picking up, removing and disposing of all litter, trash or refuse associated in any way with the vending activity;

(7) allow any items relating to the operation of a stand, garden centre, flea market or mobile canteen to be placed any where other than in, on or under the stand, garden centre, flea market or mobile canteen;

(8) vend to persons in motor vehicles;

(9) sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public or cry his wares to the disturbance of the public;

(10) when vending from a mobile canteen:

(a) vend when the mobile canteen is situated in a no parking area, or in area in which parking is prohibited at that time;

(b) vend when the mobile canteen obstructs a roadway;

(c) vend when customers or persons apparently waiting to become customers are standing in a roadway;

(d) vend within twenty-five feet of any driveway entrance to a police or fire station, or within fifteen feet of any other driveway other than a driveway for property on which the vending is lawfully occurring;

(e) vend when customers or persons apparently waiting to become customers are obstructing the traffic of pedestrians on a sidewalk;

(11) when vending from a stand:

(a) situate a stand or vend from a stand situated in a roadway;

(b) vend when there is snow or ice on the sidewalk;

(c) vend so as to obstruct the traffic of pedestrians, or wheelchairs, and without limiting the generality of the foregoing, a minimum width of **[1 meter]** of sidewalk shall be left unobstructed between the curb and a stand situated on a sidewalk, or between the stand and

the nearest building or other obstruction to the interior of the sidewalk;

(d) vend when customers or persons apparently waiting to become customers are standing in a roadway;

(e) vend within five feet of an entrance way to any building, except a building owned by the permit holder;

(f) vend within twenty-five feet of any driveway entrance to a police or fire station, or within fifteen feet of any other driveway, other than a driveway for the property on which the vending is lawfully occurring;

(g) vend within twenty-five feet of the crosswalk at any intersection;

(h) allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's permission.

(12) vend from a fixed stand with a width in excess of **[1.25 meters]**.

Penalty

206. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **[insert minimum fine amount]** and not more than **[insert maximum fine amount]** and to imprisonment of not more than **[insert maximum imprisonment]** in default of payment thereof.

207. Any person who contravenes sections **[insert section numbers of Payment in Lieu of Prosecution Offences]** of this By-Law and who is given notice of the contravention may pay to the **[Municipality]**, at the place specified in the notice, the sum of **$[insert amount pursuant to Payment in Lieu of Prosecution**

Policy] within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading: _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this VENDING BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Vending By-Law
Editor's Annotations

Enabling Legislation

Municipal Government Act, S.N.S. 1998, c.18

172 (1) A council may make by-laws, for municipal purposes, respecting

...

(c) persons, activities and things in, on or near a public place or place that is open to the public;

...

(f) businesses, business activities and persons engaged in business;
(g) automatic machines;

176 (1) Without limiting the generality of Section 172, notwithstanding the *Motor Vehicle Act*, a council may, by by-law, regulate vending, any class of vending, mobile vendors and the placement of vending machines on the streets of the municipality.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- This model By-Law provides a regulatory framework for various outdoor vending activities, including yard sales, flea markets, garden centres and vending on streets in the municipal unit, including streets which are not owned by the municipal unit.

- For the regulation of residential yard sales or other non-commercial vending on private property, the power to regulate activities "in, on or near a public place" may be the best enabling authority currently available. The definition of that phrase in subsection 2(9) of the model by-law should be particularly reviewed by the municipal solicitor.

- Automatic vending machines are dealt with by providing for either the Council or Chief Administrative Officer to enter into leases of municipally-owned space: section 3. These will typically involve newspaper boxes. Lease arrangements can be made for a number of locations through a single lease. Vending machines are permitted only with the written consent of the property owner.

- Section 6 allows Council to identify in a schedule an area or areas of the municipal unit in which commercial retail operators can regularly or seasonally place their merchandise in stands or racks outdoors next to their businesses without having to obtain a permit. Such businesses will still have to comply with generally applicable provisions found in s. 22 to prevent obstruction of sidewalks or other undesirable consequences.

- Sections 7 and 8 deal with yard sales restrictions.

- Section 9 illustrates one method of exempting a particular vending activity from the need to obtain a Permit.

- Otherwise a Vending Permit is required for flea markets and garden centres, and for all other vending in or near a public place, which must occur at a stand or mobile canteen: sections 10 and 11

- Applications are for one year, seasonal (6 month or less), or occasional (less than 10 days) permits and the contents of applications are set out in section 12.

- Section 13 provides a model for setting fees. If fees significantly exceed municipal costs, there is a possibility that they will be held to be an unlawful tax. It is possible to set different fees for different types of stands or mobile stands (such as ice cream carts or hot dog/sausage carts) if Council wishes to do so. Non-mobile stands (typically tables or benches) are charged a fee based on their length because of the ambiguity in defining when one stand ends and another begins (e.g. 2 tables side by side covered with a single tablecloth).

- Permits may be refused or suspended or revoked for breach of the By-Law, with an appeal to Council: sections 18-20.

- Permits must be conspicuously displayed on mobile stands and canteens and near fixed stands: section 21.

- Section 22 contains numerous restrictions on the operations of vendors. These should be reviewed carefully by Council to determine whether they are too restrictive or not sufficiently restrictive.

    - Subsection (1) provides for Council to identify in a Schedule those areas in which vending will be completely banned, if any.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. **[23]** for general offences and s. **[24]** for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. The *M.G.A.* provides in s. 505(2) that if no penalty is provided in a By-Law, the penalty is not less than $100 and not more than $10,000 with imprisonment in default of payment not to exceed 2 months. However, s. 172(1)(l)(iv) of the *M.G.A.* allows a By-Law to set a minimum fine, which is recommended to give the courts some guidance on the perceived gravity of the offences. Imprisonment of up to one year is permitted under s. 172(1)(l)(iv), and $10,000 remains the maximum fine for any offence. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.

Chapter [17]
Taxi By-Law

Title

208. This By-Law is entitled the "Taxi By-Law".

Definitions

209. In this By-law:

(1) "accessible taxi" means a taxi with a seating capacity of eight passengers or less, excluding the driver, designed and manufactured, or converted, for the purpose of transporting for hire passengers with physical disabilities, providing ease of entry into and egress from the vehicle in a safe and dignified manner by means of an on-board lift and conforming with all sections of Canadian Standard Association D409: Motor Vehicles for the Transportation of Persons with Physical Disabilities;

(2) "accessible taxi driver" means the driver of an accessible taxi as defined in this By-Law;

(3) "Committee" means the Taxi Committee established by or continued pursuant to this By-Law;

(4) "disqualifying conviction" means:

(a) an order prohibiting the possession of any firearm, ammunition or explosive substance pursuant to the *Criminal Code of Canada*;

(b) a conviction for an indictable offence in which the commission of violence against a person was used, threatened or attempted;

(c) conviction for an offence involving the illegal sale of liquor or narcotics or the illegal possession of liquor or narcotics for the purpose of sale or trafficking while holding a driver's license or within a period of **[two years]** immediately preceding the date of application for a driver's license;

(d) conviction for any offence involving the possession, control or use of an automobile and the unlawful possession or use of liquor or narcotics;

(e) convictions for three or more driving offences, or two or more convictions for such offences within any 12 month period unless, in the reasonable opinion of the Taxi Authority, the convictions were for offences unrelated to the possible safety of passengers or other persons using streets or highways, irrespective of whether persons were actually endangered at the time of the infractions; or

(f) convictions in another country or jurisdiction similar in nature to those described in the preceding paragraphs of this subsection.

(5) "driver" means a taxi driver, accessible taxi driver or limousine driver and "driver's license" means a license for a driver pursuant to this By-Law;

(6) "licenses" includes

(a) driver's licenses; and

(b) owner's licenses;

(7) "limousine" means

(a) a full sized luxury class four or more door sedan motor vehicle having a standard seating capacity for at least five passengers excluding the driver which is used for hire for the conveyance of passengers;

(b) which has carpeted floors;

(c) which is not equipped with taxi roof signage;

(d) which is furnished with a minimum of four of the following features:

(iv) glass partition separating the front and rear seats;

(v) top quality interior appointments, being either leather or other plush upholstery;

(vi) power windows;

(vii) one-way tinted glass;

(viii) television;

(ix) stereo system;

(x) cellular telephone;

(xi) air conditioning; and

(e) which is one of the following makes:

(i) Cadillac;

(ii) Lincoln;

(iii) Rolls Royce;

(iv) Jaguar;

(v) Mercedes-Benz;

(vi) Bentley

(vii) Royal Princess;

(viii) any other vehicle approved by the Committee upon application by a prospective licensee as being of comparable limousine quality to the makes referred to above;

(f) but excludes vehicles operated by a public utility as defined in the *Public Utilities Act* or by a motor carrier required to be licensed under the *Motor Carrier Act*;

(8) "limousine driver" means the driver of a limousine as defined in this By-Law;

(9) "operate" means to operate or drive a taxi or limousine or accessible taxi, when such vehicle is transporting, picking up, dropping off passengers for hire, or soliciting passengers for hire;

(10) "owner" means a person who directly or indirectly holds the legal title of a vehicle or, in the event a vehicle is the subject of a financing agreement (including a conditional sale or lease with an option or right of purchase upon performance of conditions stated in the agreement) with an immediate right of possession vested in a debtor then the debtor shall be deemed to be the owner for purposes of this By-Law;

(11) "taxi" means a vehicle used or intended to be used to carry passengers for hire other than a limousine, and unless the context indicates otherwise, includes an accessible taxi, but excludes vehicles operated by a public utility as defined in the *Public Utilities Act* or by a motor carrier required to be licensed under the *Motor Carrier Act*;

(12) "Taxi Authority" means an employee of the **[Municipality]** designated from time to time by **[Council OR the Chief Administrative Officer]** as Taxi Authority and includes any person designated as deputy or assistant or temporary Taxi Authority;

(13) **["taxi meter" means a mechanical or electronic apparatus or device for automatically measuring and registering the mileage traveled by a taxi, the time in which a taxi is engaged, and the fee corresponding thereto as set out in this By-Law]**.

Taxi Committee and Taxi Authority

3. The Taxi Committee is hereby **[established OR continued]** and shall have the composition, powers, duties, responsibilities and procedural rules as are more particularly set out from time to time in the **[Policy on Committees of Council]** in addition to such powers, duties and responsibilities as are set out in this By-Law.

4. The powers and duties of the Taxi Authority shall be to:

(1) make all necessary inquiries and inspections concerning applications or renewals for licenses pursuant to this By-Law;

(2) carry out periodic spot inspections, without notice, of vehicles licensed under this By-Law;

(3) issue, refuse to issue, or suspend licenses in accordance with the requirements of this By-Law;

(4) recommend disciplinary action to the Committee for breach of this By-Law;

(5) prescribe application and license forms, documents, or taxi roof signage layouts or designs;

(6) keep a register of all licences granted under the authority of this By-law and assign license numbers;

(7) cause to be prosecuted **[with the approval of the [CAO OR Clerk OR Council]]** persons who offend against the provisions of this By-Law; and

(8) take any other lawful steps in regards the licensing and regulation of taxis and limousines as may be consistent with this By-Law.

Owner's Licenses

5. No person shall operate a vehicle or, being the owner of a vehicle, shall permit such vehicle to be operated as a taxi, accessible taxi or limousine unless the vehicle is the subject of a valid and current owner's license pursuant this By-Law as a taxi, an accessible taxi or as a limousine, as the case may be.

6. No person shall operate a vehicle or, being the owner of a vehicle, shall permit such vehicle to be operated as a taxi, accessible taxi or limousine unless the vehicle has the owner's license for that vehicle conspicuously displayed on or above the doorpost, or on the rear portion of the front seat, readily visible to any passengers who may be in the vehicle.

7. No taxi, accessible taxi or limousine owner's license shall be granted for any vehicle unless and until:

(1) an application in the form prescribed from time to time by the Taxi Authority is completed and signed by the applicant for the license including:

(g) the name, address, telephone number of the owner and of any person with a beneficial ownership interest in the vehicle of **[25%]** or more;

(h) where the vehicle is owned by a corporation, the names, addresses and telephone numbers of persons directly or indirectly owning or

controlling more than **[25%]** of the beneficial ownership of the vehicle;

(i) the taxi business name under which the taxi, accessible taxi or limousine will be operated;

(j) the motor vehicle registration number, motor vehicle license plate number, make, model, colour, year and serial number of the vehicle;

(k) the insurance company, policy number, liability coverage limits, name of insured, and expiry date in respect of the motor vehicle insurance policy or policies applicable to the vehicle;

(l) the record of convictions within the preceding 5 years, for offences referenced in **[subsection (4) of section 2]** of this By-Law, of each person whose name and address is required to be provided pursuant to paragraphs (a) and (b) of this subsection, and duly executed consents sufficient to obtain verification of same from law enforcement agencies.

(2) payment is made to the **[Municipality]** of the annual fee for such licence as stipulated in Schedule "A" to this By-Law **[insert Schedule "A" with license fees not exceeding $25.00 per vehicle]**;

(3) the Taxi Authority is satisfied that each person whose names and addresses are required to be provided pursuant to paragraphs (a) and (b) of subsection (1) of this section does not have, within the preceding 5 years, disqualifying convictions pursuant to **[subsection (4) of section 2]** of this By-Law;

(4) the vehicle which is to be licensed as a taxi, accessible taxi or limousine:

(a) has been inspected by the Taxi Authority;

(b) bears a valid Province of Nova Scotia motor vehicle safety sticker:

(c) is insured for public liability and property damage and passenger hazard in an amount not less than **[$1,000,000.00]** and, when required by the Taxi Authority, provides proof of coverage;

(d) has a height from the top of the floor to the underneath side of the roof of at least 114 centimeters;

(e) has a width from the inside of one door post to the inside of the door post on the opposite side of at least 137 centimeters;

(f) has a length from the dashboard, excluding extremities, to the front of the upper portion of the back seat of at least 160 centimeters;

(g) is in a good state of repair with no visible body fillers, rust, primer paint, dents, breakages or other accidental damage or defect;

(h) functioning seatbelts for each passenger for which the vehicle is designed;

(i) in the case of a taxi, other than an accessible taxi:

  (i) is a four or more door sedan, a four or more door station wagon, or a four or more door minivan (such doors to be on the sides of the vehicle), with a design capacity of 7 passengers or less, excluding the driver; and

  (ii) **[is equipped with a taxi meter conforming with the requirements of this By-Law;]**

(j) in the case of a taxi or an accessible taxi, has roof signage conforming to the layout and design specified from time to time by the Traffic Authority and to the requirements of this By-Law

(k) in the case of either an accessible taxi or a limousine, meets the requirements in the definitions for such vehicles contained in section 2 of this By-Law; and

(l) in the case of an accessible taxi, in addition to the insurance requirements set out in paragraph **[(c)]** is insured for loss or damages arising out of or in connection with the loading or unloading and escorting of persons with disabilities outside the vehicle.

7. Owner's licenses shall specify a taxi business name under which the licensed vehicle shall be operated and no person shall operate or permit the operation of any taxi, limousine or accessible taxi under any taxi business name other than the name specified in the owner's license.

8. An owner's license may be renewed upon

(1) presentation of the vehicle for which renewal is sought prior to expiry of the license at the office of the Taxi Authority by appointment made at least 2 weeks in advance of expiry of the license; and

(2) payment of the annual license fee prescribed by Schedule "A" to this By-Law;

provided that all of the requirements of this By-Law for issuance of an owner's license continue to be met.

9. An owner's license may be transferred from one vehicle to another vehicle which complies with the requirements of this By-law, upon presentation of the vehicle for which the license is sought for inspection by the Taxi Authority and upon payment of a transfer fee of **[insert amount]**.

10. There shall be a limit of **[insert number]** taxi owner's licenses in force in the **[Municipality]** at any time, including suspended licenses within the grace period

allowed under subsection [(3)], excluding licenses for accessible taxis which shall be unlimited in number, and in particular:

(1) the Taxi Authority shall not issue a new taxi owner's license until the number of such licenses, falls below [insert same number], at which time a further number of licenses may be issued until the number again reaches [insert same number];

(2) the Taxi Authority shall maintain a waiting list of persons eligible to hold taxi owner's licenses in order of their seniority determined in order of receipt of applications, and whenever new taxi owner's licenses can be issued as a result of the total number of licenses falling below [insert same number], persons whose names are on the list shall have first opportunity to obtain a license in order of their seniority, and only one license can be obtained for each person on the waiting list; and

(3) any taxi owner's license which is revoked or surrendered shall not be renewed or reissued unless the issuance of such license will not result in the number of licenses exceeding [insert same number], except that a grace period of [3 months] following expiration of an owner's license shall be allowed before expiration is deemed to constitute surrender of a license for purposes of this section.

Other Owner Obligations

11. A taxi, limousine or accessible taxi owner shall not change the taxi business name under which the vehicle is operated without notifying the Taxi Authority of such change in writing not less than one week in advance of such change.

12. An owner of a taxi, accessible taxi or limousine shall notify the Taxi Authority forthwith of any change in the Provincial Registration of the vehicle.

13. No person shall operate or permit the operation of a taxi, accessible taxi or limousine when the conditions described in subsections **[(2) to (4) of section 7]** do not apply or have ceased to apply.

14. An owner of a taxi, accessible taxi or limousine shall not permit any person to operate such a vehicle unless that person is in possession of a valid driver's license pursuant to this By-Law.

15. An owner or driver of a taxi, accessible taxi or limousine shall provide to the Taxi Authority upon demand from time to time evidence of insurance coverage consistent with the requirements of this By-Law.

16. Every owner of an accessible taxi shall ensure that each driver of such taxi is physically capable of assisting in the loading and unloading of persons confined to wheelchairs.

Driver's Licenses

17. No person shall:

    (1) transport passengers for hire within the **[Municipality]**;

    (2) be on any highway, street, road, lane, alley, taxi stand or other public place in the **[Municipality]** in control of a motor vehicle for the purpose of transporting passengers for hire, or soliciting within the **[Municipality]** the transportation of passengers for hire;

    unless such person is in possession of a valid driver's license under this By-Law and unless that license is conspicuously displayed in the vehicle and is readily visible to any passengers who may be in the vehicle.

18. Any person in control of a motor vehicle

    (1) which displays taxi roof signage which is not covered by opaque material;

(2) which is not transporting a passenger for hire; and

(3) which is on any highway, street, road, lane alley, taxi stand or at any other public place in the **[Municipality]**, or who is found waiting with any such motor vehicle at any location in the **[Municipality]**

shall be deemed to be soliciting the transportation of passengers for hire within the **[Municipality]** and deemed to be operating the vehicle as a taxi or limousine for purposes of this By-Law.

19. No driver's license shall be granted unless and until:

(1) an application in the form prescribed from time to time by the Taxi Authority is completed and signed by the applicant for the license including:

(a) the name, address, telephone number of the applicant;

(b) the taxi business name under which or for which the applicant will drive a taxi or limousine;

(c) two professional quality photographs of himself or herself, not subject to fading or sensitive to heat, taken not less than one month before the date of the application and allowing a positive identification of the applicant at the time the application is made, two inches by two inches in dimension, which are clear and well-defined showing a full front view head and shoulders without head covering, except that worn for *bona fide* religious reasons, taken against a plain white background, one to be retained by the Taxi Authority with the applicant's file and other to be placed on the driver's license, if it is granted;

(d) the motor vehicle operator class 4 license number of the applicant issued pursuant to the *Motor Vehicle Act*;

(e) a consent in form satisfactory to the Taxi Authority to obtain an abstract of his or her driving record from the Registrar of Motor Vehicles; and

(f) the record of convictions of the applicant within the preceding 5 years, for offences referenced in **[subsection (4) of section 2]** of this By-Law, and a duly executed consent sufficient to obtain verification of same from law enforcement agencies;

(2) the applicant is in possession of and submits for inspection to the Taxi Authority a valid and current class 4 motor vehicle operator license issued under the provisions of the *Motor Vehicle Act*;

(3) payment is made to the **[Municipality]** of the annual fee of **[insert amount]** for such driver's license;

(4) the Taxi Authority is satisfied that the applicant does not have disqualifying convictions within the preceding five years pursuant to section **[subsection (4) of section 2]** of this By-Law;

(5) **[the Taxi Authority is satisfied that the applicant demonstrates sufficient English language fluency to permit the applicant to discharge his or her responsibilities as a driver competently, by passing an English language proficiency test established by the [Municipality]];**

(6) **[the applicant has successfully completed an examination on the location of streets and prominent buildings within the [Municipality]];**

20. A driver's license is not transferable.

21. A driver's license may be renewed upon payment of the annual license fee of **[insert same amount]** provided that all of the requirements of this By-Law for issuance of a driver's license continue to be met.

Other Driver Obligations

22. No person shall operate a taxi or limousine when the conditions described in **[subsections (2) and (4) of section 20]** do not apply or cease to apply.

23. A licensed driver of a taxi, accessible taxi or limousine shall immediately notify the Taxi Authority in the event of a change of address, telephone, business name under or for which he or she drives, loss of class 4 *Motor Vehicle Act* licensing, loss of insurance coverage or in the event of a disqualifying conviction.

24. All drivers of taxis and limousines licensed under this By-law shall comply with following:

    (1) Every driver while in control of a taxi or limousine shall wear a shirt or blouse; pants, skirt or dress; socks or stockings; and shoes, which clothing shall be in a clean and tidy condition at all times.

    (2) A driver shall not permit any additional passengers in his or her taxi or limousine without the consent of the passenger who first engaged him or her.

    (3) The carrying of multiple passengers for separate fares is prohibited.

    (4) Every driver, unless engaged by a passenger, shall upon being applied to in person or by telephone place his or her taxi or limousine at the disposal of the person so applying and shall proceed to any place in the **[Municipality]** as directed, provided that a driver may refuse to drive a person whose conduct reasonably causes a driver to fear for his or her safety.

    (5) Every driver shall transport any parcels, bags or luggage accompanying any passenger not exceeding 25 kilograms per item or 50 kilograms in aggregate per passenger and shall place the luggage in and out of the taxi or limousine for the passenger if requested to do so.

(6) Every driver who engages to be at any particular place at a particular time, whether by day or by night, shall be punctual in attendance at the specified place.

(7) The driver may determine whether persons may eat or drink while passengers are in his or her vehicle, and may also determine where the passengers sit, except that passengers may decline to sit in the front seat.

(8) A driver shall not, while in control of a taxi or limousine, use abusive or insulting language.

(9) A driver shall, at all times while in control of a taxi or limousine in a public place, conduct himself or herself in an orderly manner.

(10) A driver may solicit passengers for his or her taxi or limousine but such solicitation shall not be made by calling out or shouting or in any other noisy or disorderly manner.

(11) Every driver shall proceed to the destination indicated by his or her passenger by the quickest route which shall result in the lowest fare, provided however, that he or she may take another route if directed to do so by a passenger.

(12) A driver shall not refuse to transport:

(a) a passenger with a disability except where such is justified by physical limitations or disabilities of the driver, and where notice of such physical limitations or disabilities has been filed in advance with the Taxi Authority; and

(b) a dog accompanying a passenger with a disability if the dog is trained to assist a person with a disability.

(13) Every driver of an accessible taxi shall render all assistance required by a disabled passenger or any passenger confined to a wheelchair, to enter and exit the taxi safely.

(14) A driver shall not smoke while a passenger is in the vehicle.

(15) The driver shall not permit smoking in the vehicle by any passenger.

(16) No person shall represent a taxi or limousine to be a non-smoking or smoke-free vehicle if it has been smoked in while in the ownership of the current owner.

Licenses Generally

25. An owner's license and a driver's license under this By-Law constitute a license to transport parcels, boxes, packages, or other articles of whatsoever nature, at the rates specified in this By-law for the transporting of passengers, even in the absence of any passengers in such vehicle.

26. No license fee is refundable upon suspension, revocation or termination for any reason any license granted under this By-law.

27. Licenses which have been destroyed, lost or stolen may be replaced upon sufficient proof of destruction or loss being presented to the Taxi Authority and upon payment of a replacement fee of **[insert amount].**

28. The Taxi Authority may, after giving the licensee or prospective licensee an informal opportunity to be heard, refuse to issue or renew or may revoke or suspend the license of an owner or driver of a taxi, accessible taxi or limousine for a breach of this By-Law, or failure to meet the qualifications for licensing on the part of the owner, driver or vehicle, as the case may be. A refusal to issue or renew or a revocation or suspension of the license by the Taxi Authority may be appealed to the Committee within fourteen days of the decision of the Taxi Authority by written

Notice of Appeal delivered to the Clerk of the **[Municipality]**, and the Committee shall convene an appeal hearing and may, following the appeal hearing, make any decision which the Taxi Authority could have made in the first instance.

Taxi Roof Signage

29. No vehicle which is the subject of a taxi owner's licence or accessible taxi owner's license shall be operated or permitted to be operated as a taxi or accessible taxi unless it is equipped with a sign affixed to the roof of such taxi **[capable of being illuminated electrically from within such sign.]**

30. Taxi roof signs:

    (1) shall be of the size, colour, design, layout and style as may be prescribed from time to time by the Taxi Authority and shall bear the vehicle's owner's license number;

    (2) shall bear the business name under which the taxi is being operated;

    (3) **[shall be connected to the electrical system of the taxi in such manner that it is illuminated by a number 1156 bulb in the interior of the sign at the same time the headlights of the vehicle are turned on or shall be capable of being switched on and off by the operator of the vehicle.]**

31. The taxi roof sign required herein shall be removed from the roof or covered by opaque material when the vehicle is not in service as a taxi.

Fares

32. Every taxi driver shall charge the fares set out in Schedule "B" to this By-law **[insert Schedule "B" with fares for different types of services].**

33. Every taxi driver or taxi owner who receives or demands a fare greater or less than the fares set out in Schedule "B" to this By-law shall be guilty of an offence under

this By-law, provided, however, that it shall not be an offence for a driver to accept a gratuity voluntarily offered by a passenger. For greater certainty, no taxi driver shall demand any additional fare for the transportation of wheelchairs, walkers, dogs accompanying passengers with disabilities, if such dogs are trained to assist a person with a disability, or for escorting passengers with disabilities to and from the first accessible door of their pick-up or destination.

34. Every taxi driver shall post a copy of the tariff of fares as set out in Schedule "B" in the inside of the taxi where such fares are clearly visible to passengers.

Taxi Meters

35. **[No vehicle shall be licensed as a taxi or shall be operated as a taxi unless it has installed within it a single taxi meter with a single tariff only which shall be connected to, and operated from, one of the front wheels of the taxi or from the transmission or drive shaft and shall be regulated to show the correct fare for transporting passengers or goods as set out in Schedule "B".]**

36. **[The taxi meter shall meet the following specifications:**

    (1) **it shall be equipped with a timing device which shall register the fare while the vehicle is engaged but not in motion in accordance with the fare schedule;**

    (2) **it shall be placed in the taxi so that the fare registered on the taxi meter is clearly visible to passengers at all times, and the taxi meter shall be illuminated by a suitable light after dark;**

    (3) **the cover and gear of the taxi meter shall be kept sealed and intact; and**

    (4) **the taxi meter shall not be calibrated to register any fare which is not in accordance with Schedule "B".]**

37. **[The holder of a taxi owner's license shall, at his or her own expense, provide to the Taxi Authority a certificate stating that the taxi meter is properly calibrated to show the fares set out in schedule.]**

38. **[Every taxi driver who transports any passenger or article for hire shall ensure that the meter operates during the entire period of such transportation unless the driver has made agreement with the passenger for transportation at the hourly rate provided for in Schedule "B" or unless there is a regular service contract in force pursuant to that Schedule.]**

39. **[The Taxi Authority may at any time inspect any meter which is installed in a taxi and may apply such tests to the taxi and meter as may be necessary to ascertain the accuracy of the taxi meter.]**

40. **[It shall be an offence for any person who has possession or custody of the taxi meter to refuse to allow such tests or to hinder such tests being conducted.]**

41. **[The owner of a taxi who operates or permits the taxi to be operated in which is installed a taxi meter which shows a variation in the correctness of the fare thereof such as results in an increase of more than five per cent in the fares being charged shall be guilty of an offence and should in addition to any other penalty pay a testing fee of [insert amount] or reimburse the [Municipality] for tests carried out by others.]**

Taxi Stands

42. The Traffic Authority for the **[Municipality]** may establish Common Taxi Stands for taxis and accessible taxis on such streets and in such places and numbers as he or she shall determine of the greatest benefit and convenience to the public and such Common Taxi Stands shall be designated by appropriate signs as provided for in the *Motor Vehicle Act*.

43. Common Taxi Stands shall only be used by a licensed driver operating a licensed taxi or accessible taxi.

44. Taxi and accessible taxi drivers who use Common Taxi Stands shall be subject to the following regulations:

    (1) any driver whose vehicle is available for hire may take a position with the vehicle at any Common Taxi Stand where there is a vacancy;

    (2) a driver entering a Common Taxi Stand shall take a position at the rear of the taxi which is at the end of the line at the stand;

    (3) whenever a taxi or accessible taxi leaves the stand, all other drivers shall move their vehicles ahead;

    (4) all drivers shall move their vehicles when necessary to allow the departure from the stand of any other taxi or accessible taxi;

    (5) no driver while parked at a Common Taxi Stand shall:

        (a) leave his or her vehicle unattended; or

        (b) obstruct the exit of another vehicle whose driver indicates a desire to leave the stand.

    (6) no driver shall interfere with the free selection by any passenger of any vehicle at stand.

Penalties

45. Any person who contravenes any provision of this By-Law is, in addition to any other remedy, guilty of an offence and punishable on summary conviction by a fine in an amount authorized by the *Motor Vehicle Act* from time to time

46. Any person who contravenes sections **[insert section numbers of Offences governed by Payment in Lieu of Prosecution Policy]** of this By-Law and who is

given notice of the contravention may pay to the **[Municipality]** at the place specified in the notice, the sum of **$[insert amount less than $15]** within **[14 days]** of the date of the notice and shall thereby avoid prosecution for that contravention.

Effective Date

47. The effective date of this By-Law is **[insert date, which must be no earlier than the projected date of advertisement of the passage of the By-Law]**.

Clerk's Annotation For Official By-Law Book

Date of first reading: _____
Date of advertisement of Notice of Intent to Consider: _____
Date of second reading _____
*Date of advertisement of Passage of By-Law: _____
Date of mailing to Minister a certified copy of By-Law: _____

I certify that this TAXI BY-LAW was adopted by Council and published as indicated above.

_____ _____
Clerk Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Taxi By-Law
Editor's Annotations

Enabling Legislation

Motor Vehicle Act, RSNS 1989, c. 293, s. 299 and s.305:

Offence and general penalty

299 Any person who violates any of the provisions of this Act or the regulations in respect of which a penalty for the offence is not in this Act specially provided, shall be guilty of an offence and shall be liable for the first offence to a penalty of not less than fifteen dollars and in default of payment, to imprisonment for a term of not more than thirty days, for the second offence to a penalty of not less than twenty-five dollars and in default of payment to imprisonment for a term not less than thirty days nor more than sixty days, for the third offence or any subsequent offence to a penalty of not less than fifty dollars and in default of payment, to imprisonment for a term of not less than thirty days nor more than sixty days or to both. R.S., c. 293, s. 299.

Municipal by-law

305 (1) The council of a city, town or municipality may make regulations or by-laws regulating and licensing

(a) bicycles owned by residents of the city, town or municipality;

(b) persons transporting for hire by means of any vehicle, passengers or goods within the boundaries of said city, town or municipality except where such persons are public utilities as defined in the Public Utilities Act or are motor carriers who are required to be licensed under the Motor Carrier Act;

(c) the vehicles referred to in clause (b).

Content of by-law

(2) Such regulations or by-laws may

(a) prescribe the amount of the fees for such licenses;

(b) provide penalties for any violation of such regulations or by-laws, but such penalties shall not be greater than the penalties mentioned in Section 299;

(c) provide minimum and maximum fares or rates that may be charged by any persons transporting for hire passengers or goods;

(d) determine various classes of vehicles transporting passengers for hire and provide special restrictions on certain classes;

(e) authorize the traffic authority or other official to revoke any license issued under such regulations or by-laws but an appeal from any revocation so authorized may be taken to the council of the city, town or municipality or to the police commission or other committee specified in such regulations or by-laws;

(ea) divide a city, town or municipality into zones for the purpose of regulating persons who or vehicles that transport passengers or goods for hire, or in any way change the boundaries of the zones;

(eb) license persons or vehicles to transport passengers or goods for hire within one or more zones;

(ec) license persons or vehicles to transport passengers or goods for hire between two or more zones and regulate the transportation for hire of passengers or goods between zones;

(f) limit the number of persons or vehicles licensed to transport for hire passengers or goods, or may provide that only one person shall be so licensed to transport passengers or goods with any class of vehicle;

(g) require that a person applying for a license under clause (b) of subsection (1), or holding such a license, place and maintain at all times while he holds such license public liability, property damage, cargo or passenger hazard insurance to such extent and in such amount as the by-law prescribes;

(h) require that a person licensed to transport passengers for hire install and maintain special safety equipment prescribed by the regulations or by-laws in all vehicles;

(i) require the successful completion of a prescribed course of instruction in matters relevant to the taxi industry in the city, town or municipality as a qualification for a taxi-driver license.

Delegation of authority

(3) Such regulations or by-laws referring to vehicles transporting passengers for hire may delegate to the traffic authority or other official of the city, town or municipality such authority as the council of the city, town or municipality may deem expedient and such regulations may require such vehicles when not actually hired to

(a) drive on certain streets only;

(b) move off or remain off certain streets;

(c) refrain from soliciting or taking passengers on certain streets or under certain conditions;

(d) park at certain taxicab or hack stands and to refrain from parking at any other or certain other places.

Restriction on municipal by-law

(4) Such regulations or by-laws shall not

(a) impose an annual license fee of over fifty dollars per vehicle in the case of cities, and twenty-five dollars per vehicle in the case of towns and municipalities;

(b) except as in this Section otherwise provided, limit the number of persons so licensed;

(c) apply to persons transporting for hire passengers or goods brought into the city, town or municipality from outside the limits of such city, town or municipality or to persons transporting for hire passengers or goods taken on within the limits of such city, town or municipality to be discharged or unloaded outside the limits of such city, town or municipality;

(d) with respect to accessible taxicabs, limit, either directly or indirectly, the number of vehicles or the number of drivers or restrict the types of passengers that may be carried in an accessible taxicab.

Application of regulation

(5) A regulation made pursuant to clause (f) of subsection (2) may apply to one or more zones or to all zones established by or pursuant to this Section and there may be different limits for different zones.

Former city, town or municipality deemed one zone

(6) Where two or more cities, towns or municipalities have been amalgamated as a regional municipality, until the council of the regional municipality makes a regulation or by-law under the authority of clause (ea) of subsection (2) providing otherwise, each former city, town or municipality is deemed to be one zone for the purpose of this Section and, for greater certainty, in each such zone the regulations or by-laws of the former city, town or municipality, as the case may be, respecting the transport of passengers or goods for hire in effect when the former city, town or municipality, respectively, was amalgamated continue to apply as if the city, town or municipality, respectively, had not been amalgamated.

No Ministerial approval required

(7) A regulation or by-law passed pursuant to this Section does not require the approval of the Minister of Housing and Municipal Affairs.

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon, and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- The By-Law is enacted under the *Motor Vehicle Act* and care must be taken to ensure the By-Law is drafted to conform with the different requirements of that legislation and also to conform with general provisions of the *Municipal Government Act*, which might be argued to apply as well.

- It should be noted that regulation is confined by the enabling legislation to trips that are entirely within the municipal unit. It is also confined to vehicles not regulated by the Utility and Review Board.

- The scheme of the By-Law is to provide licensing of both individual taxis (and their owners) and individual taxi drivers. Both types of license are required in order to operate a taxi, accessible taxi or limousine under the model By-Law. The regulation is carried out by a staff member (Taxi Authority) and a committee of Council (Taxi Committee or Committee). The Policy on Committees of Council should be amended to provide detailed terms of reference for the Taxi Committee, but the Committee should be formally recognized in the By-Law, as required by enabling legislation.

- The model By-Law does not attempt to regulate the operation of the taxi business itself except to the extent that such businesses are owned by persons who also own taxicabs.

- Accessible cabs and limousines are defined by their physical characteristics in s.2, and it anticipated that no effort will be made to control the license numbers for those cabs as distinct from ordinary taxis which some municipal units chose to limit to a particular number of owner's licenses.

- Applications for owner's licenses are dealt with in section 7. Council may well wish to vary the requirements. For example, the model by-law requires information about the criminal record of the prospective licensee (s.7(1)(f)). Some Councils may not require that, or may wish to alter the list of disqualifying convictions in the definitions section.

- Sample provisions restricting the number of taxi owner's licenses are shown in section 11.

- Provisions requiring illuminated roof taxi signs (ss. 30-32) and taxi meters (ss. 36-42) can be varied or deleted entirely.

- The drivers' licensing provisions include requirements for photographs, similar criminal record requirements, and the abstract of the drivers' motor vehicle record: s. 20.

- Detailed driver obligations for prevention of abuse to the public are contained in s. 25.

- Provisions for refusing to issue or renew, to suspend or revoke licensing are set out in s. 29. An Appeal to Council or a Committee of Council is required by the enabling legislation.

- Regulation of Taxi fares is dealt with by creating a Schedule. Some suggested items for inclusion are: initial charge, waiting charge, mileage charge, hourly charge for longer trips, extra baggage charges, extra passenger charges, and numerous other items. It is suggested that a careful explanation of what is a waiting charge be made in the By-Law's Schedule as it has been an issue in some municipalities. The issue is whether the waiting charge applies when a customer is running an errand and has asked the taxi to wait, or whether that is a new fare.

- The model By-Law allows the Traffic Authority to set up taxi stands and identifies rules of conduct at the stands to avoid disputes between drivers: ss. 43-45.

- Specific penalties can be contained in the By-Law by inserting appropriate values in s. 46 for general offences and s. 47 for those offences for which the Payment in Lieu of Prosecution Policy is being utilized: see Chapter 9 of the Model Policies. For Summary Offence Ticket Offences no By-Law provision is required but these must be created by Provincial Regulations under the *Summary Proceedings Act*. In light of the fact that the By-Law is authorzied under the *Motor Vehicle Act*, the Penalties available are limited to the small penalties available under s. 299 of that Act.

- See the User's Guide found at the beginning of this Manual regarding the appropriate insert to make where "**[Municipality]**" appears.

- The Chapter # in the By-Law title bar should be replaced by each municipal unit with the chapter # it assigns to this By-Law.